Massachusetts Bar Association

1912.

SECOND ANNUAL REPORT

OF THE

Massachusetts Bar Association

CONTAINING

THE CHARTER AND BY-LAWS, A LIST OF OFFICERS AND MEMBERS AND THE PROCEEDINGS AT THE SECOND ANNUAL MEETING.

1912.

BOSTON:
THE ROCKWELL & CHURCHILL PRESS.
1912.

Massachusetts Bar Association.

OFFICERS, 1912.

President.

CHARLES W. CLIFFORD.

Vice-Presidents.

WILLIAM H. BROOKS.
JAMES E. COTTER.
JAMES R. DUNBAR.
SAMUEL K. HAMILTON.
JOHN C. HAMMOND.
HERBERT PARKER.

Secretary.

ROBERT HOMANS.

Treasurer.

CHARLES E. WARE.

Executive Committee.

HOLLIS R. BAILEY.
HENRY H. BAKER.
PAUL R. BLACKMUR.
LOYED E. CHAMBERLAIN.
ROBERT G. DODGE.
WILLIAM H. DUNBAR.
LEE M. FRIEDMAN.
T. HOVEY GAGE.
FREDERICK L. GREENE.
CHARLES E. HIBBARD.
HENRY F. HURLBURT.
ANDREW J. JENNINGS.
ROBERT A. KNIGHT.
JOHN W. MASON.
WILLIAM H. NILES.
JAMES M. SWIFT.
GEORGE S. TAFT.
JAMES H. VAHEY.
JOSEPH B. WARNER.
ALDEN P. WHITE.
FREDERICK N. WIER.

[In 1911 the Massachusetts Bar Association, which had been organized as a voluntary association, was incorporated.]

CHARTER.

The Commonwealth of Massachusetts.

Be it known that whereas ALFRED HEMENWAY, CHARLES E. WARE, ROBERT HOMANS, WILLIAM H. NILES, ROBERT A. KNIGHT, WILLIAM H. DUNBAR, HOLLIS R. BAILEY, LEE M. FRIEDMAN, FREDERICK N. WIER, PAUL R. BLACKMUR, T. HOVEY GAGE, HENRY H. BAKER, ROBERT G. DODGE, JAMES R. DUNBAR, JAMES H. VAHEY, PATRICK M. KEATING, JAMES M. SWIFT, JOSEPH B. WARNER, JAMES E. COTTER, SAMUEL K. HAMILTON, HERBERT PARKER, ALDEN P. WHITE, JOHN C. HAMMOND, WILLIAM H. BROOKS, CHARLES E. HIBBARD, RICHARD W. IRWIN and FREDERICK L. GREENE have associated themselves with the intention of forming a corporation under the name of the

MASSACHUSETTS BAR ASSOCIATION,

for the purpose of cultivating the science of jurisprudence, of promoting reform in the law, of facilitating the administration of justice, of furthering uniformity of legislation throughout the Union, of upholding the honor of the profession of law, and encouraging cordial intercourse among the members of the Massachusetts Bar; and have complied with the provisions of the statutes of this Commonwealth in such case made and provided, as appears from the certificate of the President, Treasurer, Clerk or Secretary, and Executive Committee of said corporation, duly approved by the Commissioner of Corporations and recorded in this office:

Now, Therefore, I, ALBERT P. LANGTRY, Secretary of the Commonwealth of Massachusetts, Do Hereby Certify that said ALFRED HEMENWAY, CHARLES E. WARE, ROBERT HOMANS, WILLIAM H. NILES, ROBERT A. KNIGHT, WILLIAM H. DUNBAR, HOLLIS R. BAILEY, LEE M. FRIEDMAN, FREDERICK N. WIER, PAUL R. BLACKMUR, T. HOVEY GAGE, HENRY H. BAKER, ROBERT G. DODGE, JAMES R. DUNBAR, JAMES H. VAHEY, PATRICK M. KEATING, JAMES M. SWIFT, JOSEPH B. WARNER, JAMES E. COTTER, SAMUEL K. HAMILTON, HERBERT PARKER, ALDEN P. WHITE, JOHN C. HAMMOND, WILLIAM H. BROOKS, CHARLES E. HIBBARD, RICHARD W. IRWIN and FREDERICK L. GREENE, their associates and successors, are legally organized and established as, and are hereby made, an existing corporation under the name of the

MASSACHUSETTS BAR ASSOCIATION,

with the powers, rights and privileges, and subject to the limitations, duties and restrictions, which by law appertain thereto.

Seal

Witness my official signature hereunto subscribed, and the Great Seal of the Commonwealth of Massachusetts hereunto affixed, this twenty-first day of June in the year of our Lord one thousand nine hundred and eleven.

ALBERT P. LANGTRY,
Secretary of the Commonwealth.

BY-LAWS.

I. — *Membership.*

The present members of the Association are hereby made and declared to be members of the Association as a corporate body, and shall be enrolled as such by the Secretary.

Such membership shall continue until death, expulsion for non-payment of dues or otherwise, or resignation in writing signed by the member and sent to the Secretary or Treasurer.

Any member of the legal profession in good standing, practising in the Commonwealth of Massachusetts, who shall have been at the Bar of this State at least five years, may become a member by vote of the Association (or of the Executive Committee), upon recommendation of the Committee on Membership, and upon paying the annual dues of the current year within the period limited herein.

The Judges of the United States Courts residing in this State, the Justices of the Supreme Judicial Court, the Justices of the Superior Court and the Judges of the Land Court shall, during their respective terms of office, be honorary members of this Association, and exempt from dues.

Other honorary members may be elected by the Association.

Candidates for membership must be proposed in writing by two members of the Association. Nominations shall be sent to the Secretary, and by him referred to the Committee on Membership. This Committee shall report to the Executive Committee or to the Association the names of all candidates recommended for membership. Five negative votes in the Executive Committee, or fifteen negative votes in the Association, shall suffice to defeat an election.

II. — *Officers.*

The officers of the Association shall be a President, three or more Vice-Presidents, a Secretary, a Treasurer, and an Executive Committee, which shall consist of the President, the last ex-Presi-

dent, the Secretary, and the Treasurer, all of whom shall be *ex officio* members, together with twenty-one other members to be chosen by the Association.

No member shall be eligible for the office of President for more than one year in succession. No member shall be eligible for election to the Executive Committee, or appointment to any other standing Committee, for more than three years in succession. The President shall be chairman of the Executive Committee. There shall be upon the Executive Committee one member at least representing each county.

There shall be the following standing committees appointed annually by the President:

Committee on Membership.
Committee on Legislation.
Committee on Legal Education.
Committee on Judicial Appointments.
Committee on Grievances.
Committee on Nominations.

Special committees may be appointed by the President on vote of the Executive Committee.

III. — *President.*

The President, or, in his absence, one of the Vice-Presidents, shall preside at all meetings of the Association. He shall appoint all standing committees except the Executive Committee within thirty days after the Annual Meeting and shall fill all vacancies.

IV. — *Executive Committee.*

This Committee shall manage the affairs of the Association, subject to the provisions of the Constitution and By-Laws, and shall have all the powers of directors.

V. — *Treasurer.*

The Treasurer shall collect and, by order of the Executive Committee, disburse the moneys of the Association, and shall keep proper books of account, make reports at the Annual Meeting of the Association, or from time to time to the Executive Committee, if so required, and discharge such other duties as shall be required of him by the Association or the Executive Committee.

He shall, at the expense of the Association, give a surety

company bond for the proper performance of his duties in such sum and in such form as shall be required by the Executive Committee.

The Treasurer's report shall be audited annually, before its presentation to the Association, by two members of the Executive Committee, appointed by the President.

VI. — *Secretary.*

The Secretary shall keep a record of the proceedings of the Association, and notify officers and members of committees of their election or appointment; shall issue notices of all meetings, and keep the seal of the Association, and discharge such other duties as shall be required of him by the Association, or by the Executive Committee. The Secretary shall have all the powers of a Clerk.

VII. — *Committee on Membership.*

The Committee shall consist of eleven members. They shall consider and pass upon all nominations for membership and shall report thereon to the Executive Committee or to the Association.

VIII. — *Committee on Legislation.*

The Committee shall consist of fifteen members. It shall be the duty of this Committee to consider and report to the Association, or to the Executive Committee, such amendments of the law as in its opinion should be adopted; also to scrutinize proposed changes of the law, and, when necessary, report upon the same; also to observe the practical working of the judicial system of the State, and recommend, by written or printed report, from time to time, any changes therein which observation or experience may suggest, and, when authorized by the Association or the Executive Committee, appear before the Legislature or its committees in behalf of the Association, to introduce, advocate, or oppose proposed legislation.

This Committee shall also consider all matters pertaining to uniformity of legislation and shall co-operate with the Commissioners on Uniform Legislation and others to procure the enactment of uniform legislation throughout the United States.

They shall make a report at the Annual Meeting of the Association on all matters of importance pertaining to legislation and law reform.

IX. — *Committee on Legal Education.*

The Committee shall consist of five members. It shall be the duty of this Committee to consider and report matters pertaining to legal education and admission to the Bar, so that a high standard of legal attainment and character in the profession may be encouraged.

X. — *Committee on Judicial Appointments.*

The Committee shall consist of nine members. It shall be the duty of this Committee to further in all proper ways the appointment of suitable men to judicial office, to the end that the office of Judge may be rendered one of dignity and respect, with proper emolument, and that lawyers of high character, sound learning, wide experience, and judicial temperament may be placed upon the Bench.

XI. — *Committee on Grievances.*

The Committee shall consist of fifteen members. This Committee may receive and hear all complaints preferred against any member of the Bar for misconduct in his profession, provided the same be in writing, plainly and specifically stating the matter complained of, and subscribed by the complainant; and with the approval of the Executive Committee it shall take such action thereon in the name of the Association as may be deemed proper.

It shall have like power in the matter of expelling any member of the Association.

XII. — *Committee on Nominations.*

The Committee shall consist of nine members. The Committee shall meet not less than thirty days before the Annual Meeting, and shall nominate at the Annual Meeting a President, Vice-Presidents, Secretary, Treasurer, and Executive Committee. They shall notify the Secretary of such nominations, so that the notice of the Annual Meeting may contain a list of such nominations.

Other nominations in writing may in like manner be made for any of such offices by not less than nine members of the Association.

XIII. — *Meetings.*

The Annual Meeting of the Association shall be held in the month of December at such time and place as the Executive Committee shall determine.

Special meetings may be called at any time by the President or Executive Committee of their own motion; and shall be called by the Secretary upon the request of fifty members, in writing, specifying the purpose thereof. At such special meeting no business shall be transacted except such as shall be specified in the notice thereof.

The Executive Committee and the Committee on Legislation shall meet in joint session not less than two weeks before such Annual Meeting, and shall prescribe such subjects for consideration at the Annual Meeting as said committees shall deem advisable. Due notice of the time and place of the Annual Meeting shall be given to each member of the Association by a notice which shall specify the matters to be brought before the Annual Meeting, as ordered by said committees. The actual expenses of said Executive Committee and said Committee on Legislation, when certified by the chairmen of said committees, respectively, shall be paid by the Association.

Nothing herein contained shall prevent the consideration at the Annual Meeting of any other business that may be regularly brought before it.

Each county, city, or local Bar Association of this State may annually appoint delegates, not exceeding three in number, to attend the meeting of this Association. Such delegates, if not regular members of this Association, shall be entitled to all the privileges of membership at and during the said meeting, except that of voting.

XIV. — *Quorum.*

At any meeting of the Association those present shall constitute a quorum. At a meeting of the Executive Committee or any standing committee whose membership exceeds ten, one-third shall constitute a quorum. Three members shall constitute a quorum of any committee whose membership is ten or less.

XV. — *Dues.*

Each member shall pay five dollars to the Treasurer as annual dues and the same shall be payable on the first of January in each year.

Any member in arrears for more than one year shall be dropped from the roll of membership, but upon payment of arrears, and upon written application, may be reinstated by the Committee on Membership.

XVI. — *Elections.*

At each Annual Meeting there shall be elected the officers of the Association, who shall hold their offices from the close of one Annual Meeting until the close of the succeeding Annual Meeting, or until their successors are elected.

In case of a vacancy in any office it shall be filled by appointment by the Executive Committee.

XVII. — *Amendment of By-Laws.*

These By-Laws may be altered or amended by a vote of two-thirds of the members present at any Annual Meeting, or special meeting called for the purpose, but no such change shall be made at any meeting at which less than thirty members are present. Notice of any proposed change shall be contained in the call of the meeting.

Massachusetts Bar Association.

OFFICERS, 1911.

President.

ALFRED HEMENWAY.

Vice-Presidents.

WILLIAM H. BROOKS. JAMES R. DUNBAR.
CHARLES W. CLIFFORD. SAMUEL K. HAMILTON.
JAMES E. COTTER. JOHN C. HAMMOND.

Secretary.

ROBERT HOMANS.

Treasurer.

CHARLES E. WARE.

Executive Committee.

Hollis R. Bailey.	Richard W. Irwin.
Henry H. Baker.	Andrew J. Jennings.
Paul R. Blackmur.	Patrick M. Keating.
Loyed E Chamberlain.	Robert A. Knight.
Robert G. Dodge.	William H. Niles.
William H. Dunbar.	Herbert Parker.
Lee M. Friedman.	James M. Swift.
T. Hovey Gage.	James H. Vahey.
Frederick L. Greene.	Joseph B. Warner.
Charles E. Hibbard.	Alden P. White.

Frederick N. Wier.

Committee on Membership.

Edmund K. Arnold	Boston.
Hugh Bancroft	Cambridge.
Charles H. Beckwith	Springfield.

John M. Maloney	Ayer.
Charles S. Rackemann	Milton.
Endicott P. Saltonstall	Boston.
Amos T. Saunders	Clinton.
Ralph A. Stewart	Brookline.
E. Mark Sullivan	Salem.
Henry H. Thayer	Worcester.

Committee on Legislation.

George W. Anderson	Boston.
Charles F. Baker	Fitchburg.
Christopher T. Callahan	Holyoke.
James B. Carroll	Springfield.
Charles W. Clifford	New Bedford.
John W. Cummings	Fall River.
Marquis F. Dickinson	Boston.
Frederick A. Fisher	Lowell.
Lee M. Friedman	Boston.
Frederick S. Hall	Taunton.
Robert Homans	Boston.
Herbert C. Joyner	Great Barrington.
John D. McLaughlin	Boston.
William H. Niles	Lynn.
Joseph C. Pelletier	Boston.

Committee on Legal Education.

Brooks Adams	Boston.
Joseph H. Beale	Cambridge.
John W. Mason	Northampton.
Joseph B. Warner	Boston.
Alden P. White	Salem.

Committee on Judicial Appointments.

J. H. Benton	Boston.
James D. Colt	Newton.
Henry V. Cunningham	Boston.
Frank F. Dresser	Worcester.
F. E. Dunbar	Lowell.
Boyd B. Jones	Haverhill.
Oliver Prescott	New Bedford.
Walter S. Robinson	Springfield.
Edmund A. Whitman	Cambridge.

Committee on Grievances.

Hollis R. Bailey	Cambridge.
Frederick P. Cabot	Boston.
Edward T. Esty	Worcester.
Arthur D. Hill	Boston.
Gardner K. Hudson	Fitchburg.
Patrick M. Keating	Boston.
James A. Lowell	Boston.
William G. McKechnie	Springfield.
James M. Morton, Jr.	Fall River.
George R. Nutter	Boston.
Francis Peabody, Jr.	Milton.
Jeremiah Smith, Jr.	Cambridge.
Roger F. Sturgis	Boston.
William D. Turner	Brookline.
S. R. Wrightington	Boston.

NOTICE OF ANNUAL MEETING.

To the Members of the Massachusetts Bar Association:

The annual meeting of the Massachusetts Bar Association will be held in Boston, Thursday, December 28, 1911, at the State House in Room 240.

The Association will first meet in the morning at 11 A.M. to listen to the annual address of the President, to elect officers for the ensuing year, and then to proceed with the reports of the standing committees, and such other regular business as may properly come before the meeting.

The Association will meet again in the afternoon at 2 P.M., to consider the special subject prescribed for consideration at the annual meeting by the Executive Committee and the Committee on Legislation under the provisions of Article XIII. of the By-Laws. The special subject so prescribed for consideration at this year's annual meeting is that of Workmen's Compensation Acts. On this subject an address will be delivered by P. Tecumseh Sherman, Esq., of the New York Bar, who is a member of the Legal Committee of the National Civic Federation. Upon the conclusion of his address the Committee on Legislation will, in accordance with a request of the Executive Committee, present a report upon Chapter 751 of the Acts of 1911 entitled "An Act relative to payments to employees for personal injuries received in the course of their employment, and to the prevention of such injuries." After this report has been presented, discussion upon it from the floor will be open. The Executive Committee has assurances that several gentlemen of the Bar who have given this subject great consideration will be present ready to take part in the discussion. The report of the Committee on Legislation will, if practicable, be circulated in print among the members prior to the meeting.

At 7 P.M. dinner will be served by the Association at the Hotel Somerset, Commonwealth Avenue, Boston. Each member wishing to attend the dinner will at once fill out and return to the Secretary the enclosed postal-card, and will, if he signifies his intention of attending the dinner, receive in due course free of charge a ticket of admission.

The Chief Justice of the Supreme Judicial Court and Hon. James M. Beck of New York have accepted invitations of the Association to be its guests at the dinner, and the Executive Committee hopes that the Governor of the Commonwealth and other gentlemen of distinction will also be able to accept similar invitations.

The Committee on Nominations has made the following nominations for officers:

For President:

CHARLES W. CLIFFORD.

For Vice-Presidents:

WILLIAM H. BROOKS.
JAMES E. COTTER.
JAMES R. DUNBAR.
SAMUEL K. HAMILTON.
JOHN C. HAMMOND.
HERBERT PARKER.

For Secretary:

ROBERT HOMANS.

For Treasurer:

CHARLES E. WARE.

For Executive Committee:

HOLLIS R. BAILEY.
HENRY H. BAKER.
PAUL R. BLACKMUR.
LOYED E. CHAMBERLAIN.
ROBERT G. DODGE.
WILLIAM H. DUNBAR.
LEE M. FRIEDMAN.
T. HOVEY GAGE.
FREDERICK L. GREENE.
CHARLES E. HIBBARD.
HENRY F. HURLBURT.
ANDREW J. JENNINGS.
ROBERT A. KNIGHT.
JOHN W. MASON.
WILLIAM H. NILES.
JAMES M. SWIFT.
GEORGE S. TAFT.
JAMES H. VAHEY.
JOSEPH B. WARNER.
ALDEN P. WHITE.
FREDERICK N. WIER.

Other nominations for any of the above offices may be made in writing by not less than nine members of the Association.

In order to carry out the desire of the Bar at large that the Association be made a working organization, the Executive Committee earnestly request a large attendance, and appeal for the presence of every member.

ROBERT HOMANS, *Secretary*,
53 STATE ST., BOSTON.

DECEMBER 13, 1911.

SECOND ANNUAL MEETING.

Pursuant to the foregoing call, the second annual meeting of the Massachusetts Bar Association was held at Room 240, State House, Boston, Thursday, December 28, 1911, at 11 A.M., the President, Alfred Hemenway, Esq., presiding.

After calling the meeting to order, the President delivered the following address:

THE PRESIDENT'S ADDRESS.

It was the boast of Augustus that he found Rome brick and left it marble — so the officers, whom you honored by election in 1910, found a voluntary association and have endowed it with corporate immortality.

Under the Revised Laws of Massachusetts your Association was incorporated as the "Massachusetts Bar Association," and to-day is its annual meeting held in pursuance of the call which has been read by the Secretary wherein is set forth the matters for this day's consideration.

When last we met it was unanimously voted to extend a cordial invitation to the American Bar Association to hold its thirty-second annual meeting in Boston, as the guest of the Massachusetts Bar Association. The invitation was given and accepted. In August last the American Bar Association met in Boston. Our Association was its host. It was a largely attended and successful meeting. It was addressed by President Taft and among the papers read was one by former associate Justice Brown of the Supreme Court of the United States. His paper bore the unique title of "Back to the Constitution." The becoming hospi-

tality of a courteous host was bestowed upon our visitors. The welcome of our Association met with a worthy response. The thanks of our Association are due to our Secretary, Mr. Homans, and to the Executive Committee for their foresight and care, which insured the unmarred success of a visit which will always be a pleasant memory. The retirement of Mr. Chief Justice Knowlton from the high office he has filled to the universal acceptance of the Bar and the people of the Commonwealth was a source of sincere regret. By his integrity, wisdom, ability, learning and unfailing courtesy he won our admiration and respect as a magistrate and our regard and affection as a man. Although unable to be present with us he writes:

"I send the greetings of a friend and companion to the members of the Association, and I deeply regret that I cannot meet them face to face."

I doubt not that this kind greeting will receive a graceful acknowledgment by the Association. The Standing and Special Committees have performed their allotted duties and will make to you their respective reports. From them you will learn at least in part what has been attempted and what has been accomplished. They are entitled to your approbation for faithful service.

By its constitution it is incumbent on the President of the American Bar Association in his address at its annual meeting to give a resumé of the legislation in the preceding year of all the states of the Union. It is a great labor and in its preparation he has the assistance of the officers of the Association representing their respective states. The work has been well done and is a valuable contribution to a general knowledge of current federal and state legislation.

A state Bar Association does not provide for or expect such a legislative review. Nor does it assemble to listen to either an epitome of, or commentary upon, its own legislation for the year. The Blue Book is in all your libraries. Comment is everywhere.

In the coming volume of our Reports, we find support for one of the declared objects of our Association, which is, "to uphold the honor of the profession of law." The honor

of the profession is preserved not only by the cultivation of its high ideals, but also by the weeding out of unworthy members.

We all approve these words in the recent opinion of Chief Justice Rugg in *Burrage* v. *County of Bristol*, relating to disbarment proceedings:

"The subject is one of vital public interest. The removal of attorneys who have become unfaithful to their trust and are unfit longer to exercise their office and to be held out as trustworthy, faithful and competent, is of concern to all the people. Although it is the duty of members of the Bar as public officers to see that their body is purged of unworthy members . . . yet the matter is of such importance that the Legislature might well be moved to make additional provision to assure the disbarment of unfit attorneys."

Herein lies a suggestion for consideration.

We are a homogeneous people. We live under one general government. So far as we belong to the great family of nations, so far as we are a world power, we exist as the United States. The powers belonging to the separate States that have been surrendered to the Union have deprived them of a part of their independent sovereignty. They still have large powers, but each is only a part of a great whole. The nations do not recognize their individuality. They deal with the whole, not with the parts.

Yet in our dual system of government those matters which are nearest to the business and bosoms of men are controlled by the local law of the several states.

Marriage and divorce, wills, the title to lands, minority, mortgages, mechanics' liens, the law of highways and intrastate commerce and the numberless duties and contracts which are constantly recurring in every civilized community are all subjects of private concern and interest, but matters which so affect the general welfare that they are regulated by law in every state, and in this regulation each state is sovereign and independent. In their internal affairs the general government has neither power nor concern. The

law of each state is supreme. In these matters of vital concern there is a real conflict of laws. In this respect the several states are foreign states. Their respective enactments have no extra-territorial force. Yet the law of each state may so differ that the performance of a lawful act may be good in one state and invalid in another simply from the *manner* of its performance. This diversity of means to accomplish the same end is needless.

Only concurrent legislation by the several states can secure uniformity. Such uniformity would be a long step in the simplifying not only of the administration of the law, but the law itself.

This is a platitude, yet it is expedient by reiteration to keep in mind these commonplaces. In statute law there is no comity. If judicial confirmation be needed the case of *Sewall et al.* v. *Wilmer et al.*, 132 Mass. 181, might be cited as an apt illustration. In this case we have the last of the many learned and masterly opinions of Chief Justice Gray. It involved the validity of the exercise of a power of appointment created by a will made and allowed in Massachusetts. The donee lived in Maryland and there exercised the power. The local law of the respective states differed. Yet, in deciding which law was applicable to the undisputed facts, the Court was *divided* in opinion. Since modern ingenuity, by steam and electricity has annihilated time and space, the burden of nonconformity in local law has become intolerable. There is but one remedy and that is uniformity of legislation.

There are Commissioners on Uniform State Laws who met in Boston in August last. It was the twenty-first annual conference and sixty-five commissioners representing thirty-three States were in attendance.

The subjects discussed were the Law of Partnership, A Uniform Marriage Act, A Child Labor Act, An Act Relative to the Probate of Foreign Wills, A Workmen's Compensation Act, An Incorporation Act and the Torrens System of Title Registration.

The American Bar Association was formed in 1878.

One of the purposes of its organization was "to promote uniformity of legislation throughout the Union."

It has held steadily to its purposes. On its initiative in 1890 the Legislature of New York authorized the appointment by the Governor of "Commissioners for the Promotion of Uniformity of Legislation in the United States." This was the initial act. It was followed by similar resolutions in Massachusetts and other jurisdictions until now all the states and territories, the District of Columbia and the insular possessions are represented in the conference with the exception of Nevada and Alaska. It has accomplished much. Of the various uniform acts recommended by the conference, Massachusetts has already adopted six:

The Negotiable Instrument Act,
The Warehouse Receipts Act,
The Sales Act,
The Stock Transfer Act,
The Bills of Lading Act and
The Uniform Desertion Act.

Other states have adopted the recommendations of the conference on these and matters of like importance. To promote such concurrent legislation for the uniformity of local law in the several states is the peculiar province of a State Bar Association.

A perseverance in that purpose of itself will justify the existence of our organization and do much to "facilitate the administration of justice," for the end of law, in the apt words of Sir Philip Sidney, is, "To even and right all things."

Another of the six objects of the Association as set forth in our Constitution is to "uphold the honor of the profession of law." This is not an idle purpose. It furnishes a timely text.

These are days when in the quaint words of Isaac Watts, "little critics exalt themselves and shower down their ill nature."

Nothing escapes their censure. Current literature teems with their diatribes. A stream of abuse runs through its pages. No profession is exempt from their assaults.

Law and lawyers are a time-worn theme for caustic pens. Wit has exhausted itself in the ridicule of our profession.

In literature and on the stage the lawyer is caricatured. But in spite of ignorant criticism and wanton abuse the lawyer is in the ascendant.

Our government is a government of lawyers. Our Declarations and Constitutions are the work of lawyers. Our legislatures are controlled by lawyers. Of all men he is most independent. He is the adviser of others. He occupies a superior position. It is human to antagonize superiority. In Massachusetts our roll of great lawyers is long. Their names are our boasted inheritance. It is not alone the great men who give character to a profession. Each is a unit of energy.

We are told, in Venice there was an ancient law requiring all returning ships to make a contribution of marble for the building of St. Mark's.

Each of us should remember in the words of Webster that we are "apprentices of the law — the honorable profession of the law," and it is our bounden duty always and everywhere to contribute to its honor and the establishment of justice — that justice "for which all places are a temple and all seasons summer."

RECORDS OF LAST MEETING.

The PRESIDENT: At our meeting of last year an order of business, not only for that meeting but for future meetings of the Association, was adopted. We will now take up that order of business. The first thing in order is the reading of the records of the last meeting.

The Secretary read the records of the first annual meeting, held December 17, 1910, and the same were approved.

The PRESIDENT: The next business before us is the consideration of the Treasurer's report. There is a provision of the constitution which requires the report of the Treasurer to be audited before the annual meeting. That report has been audited and will now be presented by Mr. Ware, the Treasurer.

The Treasurer, Mr. Charles E. Ware, read the following report:

TREASURER'S REPORT.

To the Massachusetts Bar Association:

Herewith is presented the second annual report of the Treasurer of the Massachusetts Bar Association.

The first year of our existence, beginning with 609 members ended with 619, but of these 55 allowed their names to drop from the roll of membership, so that on January 1, 1911, there were 564 members of the Association. During the year eight have been reinstated, ten have resigned, five have died and seventy-seven new members have been elected.

The present membership is 636, of which number 42 are in danger of being dropped from membership, unless the dues for 1911 are paid by or before the end of the present month.

MASSACHUSETTS BAR ASSOCIATION.

BOSTON, MASS., December 21, 1911.

Amount of balance, December 17, 1910	$2,269.80
Received 44 Annual Dues for 1910	220.00
Received 596 Annual Dues for 1911	2,980.00
Received 1 Annual Due for 1912	5.00
Received interest on deposit to date	57.18
Received contributions a/c auto for American Bar Association, August 31	65.00
Amount carried forward,	$5,596.98

EXPENSE ACCOUNT.

1910.				
		Amount brought forward,		$5,596.98
Dec.	21.	Paid C. E. Wallace, P.M., 1,500 stamped envelopes for Treasurer	$31.86	
"	22.	" The Rockwell & Churchill Press, circulars for Annual Meeting	16.00	
"	28.	" H. M. Downs Printing Company, receipts, envelopes, and circular letters (Treasurer)	6.37	
"	30.	" New American House (Annual Dinner)	423.35	
1911.				
Jan.	4.	" Robert Homans (Secretary), postage and special envelopes for 1910	6.84	
"	4.	" Brigham & Hunnewell, postage and clerical work for 1910	94.24	
"	4.	" The Rockwell & Churchill Press, 1,000 Reports on Committee on Legislation	138.50	
"	5.	" Frank H. Burt, Report of First Annual Meeting	60.00	
"	5.	" Addison C. Getchell & Son, 300 2-cent envelopes	8.00	
"	5.	" H. E. Remington & Co., rubber stamp (Treasurer)	.45	
"	6.	" The Rockwell & Churchill Press, 1,000 letter heads	5.50	
"	6.	" Massachusetts Bonding Insurance Company (Treasurer's bond)	12.00	
"	9.	" Lee M. Friedman to repay amount paid Treasurer July 22, 1910, by mistake	3.50	
"	12.	" Stephen S. Taft, return dues paid twice by mistake	5.00	
"	16.	" H. M. Downs Printing Company, 500 receipts	1.71	
"	21.	" C. T. Callahan, travelling expenses, etc.	11.70	
"	26.	" Esther F. Emerson, making list of members, Massachusetts Bar Association	3.75	
Feb.	2.	" Frank H. Burt, typewriting Legislative Bills	1.00	
"	3.	" E. S. Smith & Co., typewriting, etc.	14.00	
March	23.	" The Rockwell & Churchill Press, 1,000 letters *in re* Senate Bill No. 380	15.75	
"	29.	" The Rockwell & Churchill Press, 1,000 Act Senate Bill No. 380	5.50	
		Amounts carried forward,	$865.02	$5,596.98

		Amounts brought forward,	$865.02	$5,596.98
April	4.	Paid E. S. Smith & Co., typewriting, etc. .	5.45	
May	1.	" The Boston Mailing Company, distribution 435 copies Annual Reports .	37.95	
"	1.	" The Rockwell & Churchill Press, 1,000 Annual Reports . . .	517.00	
"	2.	" Brigham & Hunnewell, services in matter of Annual Report . .	92.99	
"	5.	" Brigham & Hunnewell, services, etc., *in re* Senate Bill No. 380 . .	26.58	
"	5.	" E. S. Smith & Co., typewriting . .	3.75	
"	26.	" Addison C. Getchell & Son, 1,000 2-cent envelopes	23.50	
June	19.	" Esther F. Emerson, typewriting 24 letters to Executive Committee .	.72	
"	19.	" H. M. Downs & Co., circular letters .	6.75	
"	30.	" The Rockwell & Churchill Press, *in re* Act District Judge	3.50	
July	11.	" C. E. Wallace, stamped envelopes .	10.62	
"	19.	" The Rockwell & Churchill Press, 700 letters about Incorporation and Excursion	5.75	
Sept.	5.	" The Rockwell & Churchill Press, 500 letter heads, envelopes, postage, etc.	32.50	
"	6.	" Motor Mart Garage, auto for entertaining American Bar Association, August 31	156.15	
"	14.	" Expense of steamboat excursion, September 1st, T. D. Cook & Co., collation	1,149.43	
"	14.	" Samuel Q. Cochran & Co., wines, etc.	458.75	
"	14.	" Nantasket Beach Steamboat Company,	500.00	
"	14.	" Estabrook & Eaton, cigars, etc. . .	71.63	
"	14.	" Salem Cadet Band (steamboat excursion to Nantasket)	121.00	
"	16.	" Boston Badge Company, badges .	22.50	
"	16.	" J. L. Fairbanks & Co., programs for auto ride	4.25	
"	16.	" Boston Elevated Railway Company, 12 special cars, August 29, to Harvard Square	116.00	
"	16.	" Brigham & Hunnewell, circulars, envelopes, postage, etc., in connection with American Bar Association Meeting	64.74	
"	16.	" The Rockwell & Churchill Press, printing tickets, information, etc. . .	10.75	
"	16.	" The Rockwell & Churchill Press, printing suggestions	3.25	
		Amounts carried forward,	$4,310.53	$5,596.98

		Amounts brought forward,	$4,310.53	$5,596.98
Sept.	16.	Paid Robert Homans, tips at Massachusetts Institute of Technology a/c American Bar Association Meeting . .	10.00	
"	16.	" Massachusetts Institute of Technology, use of halls, etc.	50.31	
"	16.	" Massachusetts Institute of Technology, additional cost of running power plant	13.01	
"	23.	" The Country Club (entertaining American Bar Association) . .	79.80	
"	30.	" E. S. Smith & Co., typewriting . .	2.00	
Dec.	9.	" The Rockwell & Churchill Press, printing 675 postals Annual Meeting	2.75	
				4,468.40
		Balance on hand		$1,128.58

Respectfully submitted,

CHAS. E. WARE,
Treasurer.

The TREASURER: The auditors have requested me to read their report, which is appended.

REPORT OF AUDITING COMMITTEE.

We hereby certify that we have examined the cash book of the Treasurer of the Massachusetts Bar Association for the year ending December 20, 1911, and find the cash on hand as called for by above statement, that vouchers are on hand for all disbursements, except two items satisfactorily explained, that the footings of the cash book are correct, and that the cash condition is as shown on that date.

WILLIAM H. DUNBAR,
PAUL R. BLACKMUR,
Auditing Committee.

DECEMBER 21, 1911.

On motion, the report of the Treasurer was accepted and ordered placed on file.

The PRESIDENT: The next business is the report of the Executive Committee.

REPORT OF EXECUTIVE COMMITTEE.

The SECRETARY: The Executive Committee desires to report to the Association on two matters.

REPORT OF COMMITTEE ON APPOINTMENT OF AN EXTRA DISTRICT JUDGE.

To the Executive Committee of the Massachusetts Bar Association:

GENTLEMEN: The committee appointed to report on the need of another Federal District Judge in Massachusetts has the honor to make this supplementary report.

After our first meeting, at which we decided that more time was needed to appreciate the probable effect of the Moon Bill on the business in the Circuit, your committee communicated with Senator Lodge, stating our inability at present to make any recommendation. The serious illness of Judge Schofield, the considerable increase in criminal business and the development of an inability on the part of other District Judges, because of the increased work in their own districts, to give such help to the Massachusetts district, led your committee to meet again and consider the matter anew. We were all then of opinion that it is already apparent that a second District Judge in the District of Massachusetts is seriously needed and that the work of the Court will be very much impeded if one is not appointed at the earliest possible moment.

At the same meeting we decided that it was desirable to have joint action with the Boston Bar Association. We therefore arranged a joint meeting with the committee of that Association. At that meeting it was unanimously resolved by both committees that we should support in principle the bill already introduced by Senator Lodge for the appointment of a second District Judge in the District of Massachusetts.

Respectfully yours,

EDWARD S. DODGE.
JOSEPH H. BEALE.

The SECRETARY: The Executive Committee has also received from the committee of which Mr. Joseph B. Warner was chairman, and Messrs. Knight and Niles were also members, a report upon a code of ethics, and the Executive Committee voted to ask the Association to authorize the Executive Committee to prepare and adopt such a code as the code of ethics of the Massachusetts Bar Association. I first move, Mr. President, the adoption of the resolutions which I read in regard to the bill providing for an additional federal district judge for the district of Massachusetts:

"RESOLVED, That the Massachusetts Bar Association is in favor of the measure now pending in Congress making provision for an additional Federal District Judge for the District of Massachusetts. The Association believes that in order that the work of the District Court for the District of Massachusetts be promptly attended to, it will be necessary, after the first of January, 1912, to have a second District Judge.

"RESOLVED, That the Secretary send a copy of the above resolution to the Senators and Representatives of Massachusetts in Congress."

The motion was unanimously adopted.

The SECRETARY: I now move, Mr. President, at the request of the Executive Committee, that that committee be authorized to prepare and adopt a code of ethics as the code of ethics of the Massachusetts Bar Association.

The motion was adopted unanimously.

The PRESIDENT: The next business will be the report of the Committee on Membership.

The SECRETARY: Mr. President, Mr. Charles S. Rackemann asked me to say to the Association that he desired to have me read the report of the committee of which he is chairman (reading report, as follows):

REPORT OF COMMITTEE ON MEMBERSHIP.

BOSTON, December 28, 1911.

MASSACHUSETTS BAR ASSOCIATION, Robert Homans, Esq., Secretary, Exchange Building, Boston.

DEAR SIR: For the Membership Committee I beg leave to report as follows for the past year:

Our committee has held a number of meetings, and has acted upon all applications for membership which have been referred to it, and the results have been reported to you from time to time.

There have been reported favorably, eighty-seven; pending, one.

Prior to the last annual meeting, our committee reported certain recommendations for the consideration of the Executive Committee, as to increasing the membership of the Association. We are not advised of any action being taken on these recommendations by the Executive Committee. If they have not yet been acted upon, we beg leave to renew our suggestions.

Respectfully submitted,

For the Committee,

CHARLES S. RACKEMANN,
Chairman.

On motion, the report was accepted.

The PRESIDENT: Next comes the report of the Committee on Legislation; Mr. Niles.

REPORT OF COMMITTEE ON LEGISLATION.

Mr. William H. Niles, of Lynn, read the following report:

The Committee on Legislation of the Massachusetts Bar Association has the honor to make the following report:

During the past year your committee has adhered strictly to the policy adopted last year, with the approval of the

Executive Committee, of refraining from any attempt to influence legislation concerning any matter that seemed in its nature political, economic or commercial.

[Mr. NILES: And I ought to say, Mr. President, that the committee was not wholly unanimous as to "legislation economic or commercial," some members of the committee having the opinion that this Association should look after and take part in legislation of that character; but a majority of the committee were of the opinion that it was inadvisable, for the reason that I think follows in the next sentence.]

Members of this Association, coming as they do from all parts of the Commonwealth, and representing a large diversity of interests, have conflicting views upon much of the legislation proposed, and your committee has not been authorized to take any action which would tend to commit this Association in favor of or opposed to such legislation.

It may be remembered that our report one year ago dealt very largely with the changes proposed by the Commission appointed by the Governor to consider means to expedite civil trials, and the act reported by the Commission, entitled, "An Act to Secure a More Speedy Administration of Justice in Civil Actions."

The proposed act contained sixty-seven sections. By unanimous vote of the Association the subject matter of twenty-seven sections of said act, namely, Sections 4, and 17 to 42 inclusive, were re-submitted to the Committee on Legislation for further consideration and report. No action has been taken by your committee upon either of said sections, and no report thereon is deemed necessary for the reason hereafter stated.

As a result of the action taken by this Association at the annual meeting and of instructions given by the Executive Committee, your committee appeared before the Committee on the Judiciary concerning the passage of said act, favoring the adoption of sixteen sections, opposing the adoption

of fifteen sections, and proposing the substitution of language favored by the Association in place of seven sections of said act.

Before your committee was able to meet to give to the sections recommitted to it the careful consideration which the subject demanded, it became very apparent to your committee that no substantial part of the act would be passed by the Legislature, though it was the opinion of the committee of last year and is the opinion of this committee that as to many of the subjects dealt with by the proposed act there is great need of legislation and room for radical improvement.

It probably will be impossible to secure the enactment at any one time of changes so sweeping and drastic as those proposed in the act recommended by the Commissioners, but it appears to your committee that several of the recommendations proposed by this Association ought to have been adopted by the Legislature, and they are of such importance to the administration of justice that your committee is hopeful that at some time this Association may actively endeavor to have such recommendations enacted. For instance, the party who brings an action in the Superior or Supreme Court where one hundred thousand dollars or more is involved is not entitled to more than one trial upon questions of fact, while a party claiming any sum less than one thousand dollars, however insignificant his claim may be, may not only have the right to a trial in the lower court, but the right of appeal and a trial to a jury in the Superior Court, not only entailing large cost, but in many instances two or three years delay. In other words, we give him a chance at a single judge and then a right to the verdict of a jury if the decision of the single judge does not suit him, or he sees an opportunity to profit by delay.

The Association recommended in terms that seemed to safeguard the rights of both parties that a party who brings his action in the lower court shall waive his right to trial by a jury, and in all matters where a verdict or finding is less than two hundred dollars, the Superior Court shall have general power to withhold costs, award double costs, or

award counsel fees to the prevailing party. In the opinion of your committee such legislation as this would greatly diminish the trial by a jury of petty cases, and tend to secure justice in causes clearly vexatious.

The Association also recommended that before an attachment of real or personal property should be made, the party or some person in his behalf should make affidavit that he believes he has a good cause of action and reasonable expectation of recovering judgment therein, that he believes the attachment is not excessive and that the same is reasonably necessary to secure any judgment which he may recover in said action.

Your committee were unanimously in favor of some legislation restricting the right to attach on *mesne* process, which under our present practice is utterly without wholesome restrictions, and in the hands of a mercenary and unscrupulous attorney is often used as a club to enforce settlements of unfounded claims.

By vote of the Executive Committee a petition was presented to the Legislature of 1911 by this Association, praying that the salaries of the Justices of the Supreme Judicial Court be increased two thousand dollars, and that the salaries of the Justices of the Superior Court be increased fifteen hundred dollars per annum. Your Committee on Legislation appeared before the Legislative Committee on Public Service in support of this petition, and also before the Senate Committee on Ways and Means, and though the Committee on Public Service reported against an increase of these salaries, and the report of such committee was accepted by the House of Representatives, nevertheless, a bill carrying into effect the prayers of the petition was, largely we believe as a result of your committee's efforts, substituted in the Senate for the adverse report of the Legislative Committee, and after various vicissitudes this bill passed both branches of the Legislature and received the approval of the Governor, and is now Chapter 743 of the Acts of 1911. There was no difficulty in securing the approval of the Governor to this bill, as in his message to the Legislature he had stated that in his opinion the salaries

were inadequate, and had recommended an increase. Your committee was greatly assisted in securing the passage of this bill by Messrs. James H. Vahey and Frederick W. Mansfield.

By vote of the Executive Committee your committee was authorized to oppose the bills before the Committee on the Judiciary which provided for trial by a jury of the facts involved in contempt proceedings in equity cases, but in spite of the efforts of your committee we regret to report that a bill in modified form was enacted as Chapter 339 of the Acts of 1911.

A petition was presented to the General Court for legislation authorizing the Chief Justice of the Superior Court to request a Justice of that Court who had retired at the age of seventy to perform judicial service after such retirement. Your committee appeared before the Committee on Public Service in favor of this bill, and it was passed by both branches of the Legislature and received the approval of the Governor, and is now Chapter 527 of the Acts of 1911.

Since the middle of November, by direction of the Executive Committee, your committee has been engaged in the consideration of Chapter 751 of the Acts of 1911 relating to payments to employees for personal injuries received in the course of their employment, etc. As the Executive Committee acting jointly with the Committee on Legislation has determined to present this act to the members of the Association for discussion at the annual meeting, your committee has deemed it advisable to present its views as to the same in a separate report so that it might be printed and submitted to the members of the Association prior to the meeting.

Respectfully submitted,

For said Committee,

W. H. NILES,
Chairman.

Report of Committee on Legislation on Chapter 751 of the Acts of 1911.

The Committee on Legislation of the Massachusetts Bar Association, at the request and by direction of the Executive Committee, respectfully submits the following report upon Chapter 751 of the Acts of 1911, entitled "An Act relative to payments to employees for personal injuries received in the course of their employment and to the prevention of such injuries."

Your committee was not requested to consider and report upon this act until November 18, 1911. Since receiving the request your committee has met as frequently as was practicable, and has endeavored to make itself familiar with the provisions of this act, and to arrive at some definite conclusion as to the advisability of recommending, if authorized by the Association, changes therein.

Your committee realizes that with the short time at its disposal it has not been able to give the whole subject of Workmen's Compensation for Injuries the exhaustive and careful study which the importance of the subject deserves, though the committee has been in session several days, all of which were devoted to a consideration of the subject and to a discussion of the provisions of this act.

With the objects sought to be obtained by this act your committee is in entire sympathy, believing that working men receiving injuries in the course of their employment should be recompensed by their employers as a part of the reasonable cost and expense of the business. As to the means to be adopted for carrying this object into effect, whether the act should leave the employer and employee free to choose whether they shall be bound or refuse to be bound by the provisions of the act, or whether it should be compulsory upon both, or whether it should be optional on the part of both with certain compulsory features, as in the Massachusetts act; whether an employer shall be allowed to insure however and wherever he may choose, or be compelled to allow the state to be the insurer, or whether he shall be required to insure in a large mutual company under

state supervision, are questions on which the members of your committee are not in entire accord.

Your committee is of the opinion that these questions and many others which arise are largely economic and political rather than strictly legal, and that a Bar Association may well hesitate before embarking as a body upon the task of endeavoring to shape or promote economic or political legislation. Furthermore, in the opinion of your committee the whole situation in this country in regard to legislation of this character is still in a chaotic state. Different states have adopted very different statutes; the Court of Appeals of New York has held that a compulsory law is unconstitutional, while the Supreme Court of the State of Washington has held that such a law is not unconstitutional; a Federal Commission, which has incurred great expense and devoted much time to the consideration of this subject, your committee understands is very soon to make an exhaustive report to Congress; the Commissioners of the various states upon Uniformity of Legislation have prepared a tentative draft of a bill differing in essential particulars from the act adopted by the Legislature of Massachusetts as well from the acts adopted in other states. Under these circumstances your committee is not disposed at this time to recommend any radical change in the general principles of the Massachusetts act. Some changes, however, seem imperatively necessary to render its operation practical, workable, and effective, and rather than to propose at this time any radical change in the plan and general scope of the act, your committee recommends that this association coöperate with the Legislature in an impartial endeavor to perfect the act as far as possible, leaving greater changes, if they should appear to be necessary, to be made when the application and effect of the act shall disclose more clearly just what changes therein are desirable.

Your committee, however, calls attention to certain provisions of the act, which, in the judgment of your committee, require amendment, as follows:

First. Your committee recommends the amendment of Part II., Sect. 17, so that it shall read as follows: The

notice shall be served upon the Association, or upon the subscriber, or upon one subscriber if there are more subscribers than one, by delivering the same to the person on whom it is to be served, or leaving it at his residence or place of business, or by sending it by registered mail addressed to the person on whom it is to be served, at his last known residence or place of business.

Second. Your committee recommends that Part II., Sect. 18, be amended by adding at the end thereof the words, "at the time it was suffered."

Third. Part II., Sect. 19, provides that after an employee has given notice of the injury as provided by this act, etc., he shall, if so requested by the Association, submit himself to examination by a physician or surgeon, etc. As this notice may not be given for six months after the injury, and as it is oftentimes of the greatest importance to have an examination as soon as practical after the injury, your committee recommends that the words "After an employee has given notice of the injury as provided by this act" be stricken out.

As it is clear that the liability of the employer under this act, in case of serious or wilful misconduct, may be doubled or greatly increased, it appears to your committee that the employer should have the right at his own expense to cause such examination or examinations at reasonable times to be made. Your committee therefore recommends the amendment of said section so that it shall read as follows:

"Sect. 19. An employee shall at any reasonable time during the continuance of his disability, if so requested by the Association or the subscriber, submit himself to an examination by a physician or surgeon authorized to practise medicine under the laws of the Commonwealth, such physician or surgeon to be furnished and paid by the Association, or by the subscriber if the subscriber requests the examination. The employee shall have the right to have a physician provided and paid for by himself present at the examination. If he refuses to submit himself for the examination, or in any way obstructs the same, his right to

compensation shall be suspended, and his compensation during the period of suspension may be forfeited."

Fourth. Your committee recommends that the memorandum under Part III., Sect. 4, the order under Part III., Sect. 13, if amended as we suggest, and the decisions of the Committees of Arbitration, and of the Industrial Accident Board, where an appeal is taken, be considered final and conclusive as to all matters of fact, if the provisions of the act have been complied with; and, when the Court is of the opinion that the provisions of such act have been complied with, the memorandum, orders and decisions of said Committees, or of said Board, shall be enforceable by the Superior Court as a decree of a Court of Equity.

The Supreme Judicial Court in its opinion assumes that the decisions of the Committee on Arbitration, or the Industrial Accident Board, are to be enforced by decrees of the Court. Expensive or long continued litigation in the courts should certainly be avoided, and this can only be done by excluding from the consideration of the Court all matters except such as appertain to the regularity of the proceedings before the Committee or Industrial Accident Board. The determination of this Committee and of the Industrial Accident Board upon all questions of fact should be final and conclusive.

Fifth. Part III., Sects. 5, 7, and 10, provide, in effect, that if the Association and the injured employee fail to agree, the controversy shall be decided by a Committee of Arbitration of three members, each party naming one, etc., and that unless a claim for review is filed by either party within seven days after the decision of the Committee, it shall be enforceable as if it were a decree of the Superior Court.

" Either party " in these sections clearly means the Association or the injured employee. While the employer may be required as before stated to pay as a penalty a large sum for which the Association is not liable, he is not allowed any voice in the selection of the arbitrators, nor does he have any right of appeal either to the Industrial Accident Board, or upon questions of law to the Superior Court. Inde-

pendently of the question of fairness towards the employer, the constitutionality of this provision of the act, where an award is made requiring the payment of money by the employer over and above that required to be paid by the Association, must be open to serious question, if indeed it is not clear that the employer could not be held to pay the same.

Part III., Sect. 5, provides that a member of the Industrial Accident Board shall act as chairman of the Arbitration Committee. Your committee is of the opinion that a member of the Industrial Accident Board ought not to act upon the Arbitration Committee and recommends that some disinterested person be appointed by the Industrial Accident Board as chairman of such committee, and that such appointment shall be made in the call for the formation of a Committee of Arbitration, and that no person shall serve upon an Arbitration Committee more than three times in any one year. As the subscriber is bound by the decision of the Committee of Arbitration or of the Industrial Accident Board to pay a penalty if the subscriber is held to be guilty of serious and wilful misconduct, it becomes important if not necessary that he shall have some voice in the selection of the arbitrators. Your committee therefore recommends that said section be further amended so as to provide that the member of the Arbitration Committee who shall be named by the Association shall be approved by the subscriber.

Sixth. As to Part III., Sect. 7, your committee is of the opinion that the provision that hearings of the committee shall be held at the place where the injury occurred is not clear, and that the act should be so amended as to specify that the hearings should be held in the city or town where the injury occurred, unless the parties otherwise agree, and that the words "either party" in next to the last line of said section be stricken out, and the words "association, subscriber or employee" be substituted therefor.

Seventh. Part III., Sect. 9, now provides that the arbitrators shall each receive five dollars as a fee for his services, but the Industrial Accident Board or any member thereof

may allow additional reasonable amounts in extraordinary cases. Your committee is of the opinion that the words " or any member thereof " where they appear in this section or in any similar connection in other parts of the act, should be stricken out, and if additional fees are to be allowed such allowance should be made by the Board, or at least by a majority of the members of such Board.

Eighth. Part III., Sect. 11, provides for an appeal to the Supreme Judicial Court, but it does not fix any time within which the appeal shall be taken and, as one of the objects of the act is to avoid unnecessary delays, your committee recommends that the time within which such appeal may be taken be limited to twenty days.

Ninth. Part III., Sect. 13, provides that fees of attorneys, etc., for services under this act shall be subject to the approval of the Industrial Accident Board, while Part II., Sect. 21, provides that no payment under this act shall be assignable or subject to attachment, or be liable in any way for any debts. Your committee is of the opinion that the act should give the Industrial Accident Board power to determine and order how attorneys' fees shall be paid or secured, otherwise employees who are liable to need the services of experienced and able attorneys will be handicapped, if indeed they do not find it impossible to secure the services of such attorneys. In accordance with this suggestion your committee recommends that the following words be added at the end of Sect. 13 of Part III., namely: " It may make such order for the payment thereof as justice may require."

Tenth. Your committee is of the opinion that the act in its present form is not clear as to the right of the employee's estate or dependents to compensation if the employee dies from causes other than the injury, after his claim for compensation has accrued, or has been determined, and recommends that Sect. 13 of Part II. be so amended that payments, except under Sects. 6 and 11 of Part II., shall cease upon the death of the employee from a cause other than the injury for which he is receiving compensation.

Eleventh. Your committee recommends that provision

be made in the act for filling vacancies, should a vacancy occur by death or other cause in a Committee of Arbitration after the same has been formed.

Twelfth. Under this act the Arbitration Committee or Industrial Accident Board must be unanimous. It appears to your committee that the agreement of a majority of the members should be sufficient. Your committee is of the opinion and therefore recommends that another section be added to Part III., as follows: "Sect. 19. In all hearings and proceedings before the Industrial Accident Board, or the Committee of Arbitration, a majority of the members thereof shall attend in person and the decision of a majority of the members of said Board or Committee shall constitute the decision of said Board or Committee."

Thirteenth. Under Sect. 22 of Part IV. a subscriber who has been required to pay a judgment in favor of an employee for damages on account of personal injuries sustained by such employee, is entitled to be repaid by the Association the amount of such judgment and costs. It seems to your committee that such a subscriber should also be entitled to receive from the Association the full amount ot the expenses he incurred in defending the action. We recommend, therefore, inserting in that section after the words "assessed therewith," the words "and his expenses in defending the action."

Respectfully submitted
for and in behalf of the Committee,
WILLIAM H. NILES,
Chairman.

The PRESIDENT: The report of the committee is before you; what action will you take?

Mr. NILES: Mr. President, I move that the consideration of that part of the report relating to the Workmen's Compensation Act be postponed for consideration this afternoon, according to the understanding of the Executive Committee and the Committee on Legislation.

The motion was carried.

Mr. GEORGE W. ANDERSON: Mr. President, there is one matter in that report that it seems to me worth while to bring to the attention of the Association, and that is the sentence in the early part of the report concerning which Mr. Niles said that the committee were not unanimous, — as to whether the Committee on Legislation or this Association should limit its functions to matters which were neither political, commercial, or economic. I am one of those who believe that that is a limitation which will impair the usefulness of this Association. Assuming that matters of legislation are to be primarily considered and threshed out in the Committee on Legislation, it seems that that committee must exercise its functions as broadly as this Association would undertake to exercise them. I assume that we are all in hearty accord with the President in his statement in the address just given, to the effect that one of the functions of a State Bar Association is to work towards uniform legislation. Now, uniform legislation — interstate legislation, legislation of other states — must deal with matters which are mainly economic and commercial. It would seem, therefore, to me a matter of some importance as to whether the Committee on Legislation is to deem itself limited to the consideration of matters which are outside that scope; I take it, of course, that we should agree that matters political or partially political should be excluded. This brings us down to the somewhat narrow field of procedure — whether judges' salaries should be raised or municipal court functions changed. Or are we to have a broader field? My own view is that the Committee on Legislation should exercise a broader field and that matters economic and commercial should be most carefully discussed. I see no ground for thinking that there will be any conflict beyond the ordinary wholesome conflict of differing views. Therefore, I move you that it is the sense of this Association that matters

economic or commercial should not be excluded from the consideration of the Committee on Legislation.

The motion was seconded.

Mr. ROBERT HOMANS: Before the vote is passed may I say a word?

The PRESIDENT: With pleasure.

Mr. HOMANS: I am one of those on the Committee on Legislation who entirely agree with Mr. Niles, and I wish to put this case as an illustration that occurred to me when this was under discussion. There have been, Mr. President, for years and there will continue to be for years, questions, for instance, of the hours that women and minors and adult males should work in the mills of Massachusetts. I do not believe that the Massachusetts Bar Association can serve the best purposes of the Bar and best serve the administration of justice by having its Committee on Legislation consider such a subject as the hours to be spent in labor by the working people throughout the state. I think that that brings us into an economic field which renders it difficult for the Association to carry the weight which it would have in matters relating to the administration of law in the Courts and the upholding of the profession of the law.

Mr. HOLLIS R. BAILEY: I would like to say just a word in favor of Mr. Anderson's motion. It seems to me that the committee already has gone on record as against its own resolution. If anything is an economic question, this question of workmen's compensation with which the committee are dealing and which we are going to discuss this afternoon is such a question.

Now a word further. It seems to be the sense of the meeting that uniform laws are a proper subject-matter for the consideration of this body. The Commissioners on

Uniform State Laws have been working for two years on a Uniform Child Labor Law which deals with the proper hours of work for minors of different ages and women under age, and at the last conference we adopted and recommended a uniform child labor law; and as a member of that body I hope we may have the support of the Massachusetts Bar Association when we go before the Legislature at the coming session to have that uniform child labor law adopted in Massachusetts. I hope that Mr. Anderson's resolution will prevail — not that the Committee on Legislation are going to consider every economic question or every commercial question, but are going to exercise a wise discrimination and are not going to say that they will draw any hard and fast rule in advance.

Mr. NILES: Mr. President, I do not wish to have it suggested and unexplained or uncorrected that our committee has any desire whatever in regard to this matter. We are not in any sense, Mr. President, opposed to the motion which is before the meeting. It would be very queer if I, serving upon that committee, with a possibility at least that I may be appointed for another year, should ask to have our duties restricted, our powers limited. But if you, Mr. President, sat with our committee composed of fifteen members of this Association from different parts of the state, you would see the difficulty that we have in reaching any decisive action. For instance, if eight of us decide that we will favor certain legislation, four or five may oppose, and as ardently and earnestly and conscientiously oppose as the eight of us favor it. I mean that sometimes there is a question of legislation about which a man has some scruples and he opposes it and feels as if it would be a grievance that the act should pass, while other members feel as if it would be a grievance if the act did not pass. Now, gentlemen, I say again as I

sit down that the committee is entirely willing, so far as we have acted for the last two years — I have no doubt that will be so every year in the future — the committee is perfectly willing to consider any matter of legislation that any member of this Association sees fit to present to us; but you are giving this committee a very large latitude when you extend to fifteen of us authority to represent nearly six hundred members of this Association, and we are not asking for any such authority.

Mr. MOORFIELD STOREY: Mr. President, it seems to me that the question is not whether on every case of economic or commercial legislation the committee shall make a report. The question is whether they shall by vote of this Association be excluded from ever considering a question if it happens to be economic or commercial, and I think it would be very unwise to let that restriction be imposed. I quite understand that the committee will differ on these questions, and where they seriously differ I fancy that their influence with the Legislature will not be exerted. But there must be a great many economic and commercial questions upon which they would agree, and if the fact that they disagree on the question is to prevent their considering it the same argument would apply against their considering questions of procedure. I fancy it would be impossible to get any committee of lawyers to agree unanimously on any question of procedure. There would be perhaps as wide difference on that as there would be on commercial questions. I think we can trust the committee with discretion and in cases where it is clear that they cannot fairly represent the Association, trust them not to do so. But we ought not to restrict them entirely on matters which happen to come under the heading of matters economic and commercial. The American Bar Association has been engaged in securing uniform legislation and in almost every case it has been commercial or economic.

Mr. NILES: Excuse me one moment; I think there may be an error here in the understanding of our powers. I do not understand that we have power to go before any committee of the Legislature to advocate or oppose until we have submitted the question to the Executive Committee, and I believe we act under the direction of the Executive Committee in reference to that matter. If I am in error about that I shall be very glad to be corrected.

Mr. ANDERSON: Mr. President, I got the by-laws for the very purpose of calling attention to the fact that this committee is pretty strictly limited. Article X. provides that the Committee on Legislation may —

> "consider and report to the Association, or to the Executive Committee, such amendments of the law as in its opinion should be adopted; also to scrutinize proposed changes of the law . . . and, when authorized by the Association or the Executive Committee, appear before the Legislature or its Committees in behalf of the Association, to introduce, advocate, or oppose proposed legislation."

So that we have no initial power to represent the Association anywhere.

One word further, if I may, in reply to Mr. Homans' suggestion as to hours of labor. If this Association is to limit its functions so narrowly that a question so non-partisan, so humanitarian as uniform hours of labor, — for women and children at any rate, and perhaps for men, — is beyond the scope of its consideration and possible recommendation, I think that a good many of us would prefer other fields of activity. If men who are giving up their time and energy and great experience and devotion, as Mr. Bailey is, to the attempt to promote uniform legislation may not hope to have at least the careful consideration of the Massachusetts Bar Association as to whether it shall or

shall not back him up in any proposal, what motive is there for a Massachusetts lawyer to go into such work? I think the attitude that we take on this question is a matter of a good deal of importance.

Mr. CHARLES W. CLIFFORD (New Bedford): Mr. President, as a member of the Committee on Legislation it seems to me that this discussion is not directed to the exact point which was in my mind when I joined in the report which has been read, or in the report which will be presented this afternoon. It is not at all a question of whether this Association shall take a stand upon an economic question. That may be its duty. It is a question simply of the practical working-out of a proposition in the committee. My experience upon the Committee on Legislation has shown me that the discussions there are valuable, very valuable, but they only reach a certain result, which uniformly is that the committee as a committee cannot upon economic questions reach a conclusion which will command the substantially unanimous approval of the Association. Take last year. We worked very hard. We were able to present to the Association a report that interested them at least and upon which affirmative action against the report of the committee was had. All of that is wise, all of that is good. But it does seem to me that it is perfectly futile for the Committee on Legislation, remembering just how our meetings are — a body of fifteen men getting together half a dozen times, eight or ten times, and the members not being present at every meeting — to pass upon economic questions. I think, therefore, that it should be within the province of the committee, as Mr. Storey and Mr. Anderson say, to present to the Association for its action — which means something — at an annual meeting, a report; but the mere expression as of a bare majority of the Committee on Legislation upon an economic or com-

mercial question is worthless here. If I thought that Mr. Anderson's motion went only to the subject of the Association's action or the right of the committee to present these questions with a recommendation one way or the other — we would all be in favor of it — there would not be any question at all. I wanted to say this in explanation of the action of the Committee on Legislation and of the report which has been submitted to you. Being economic questions we thought it wiser not to make any recommendation, because our recommendation would be of such little value under all the circumstances, and that those great questions in regard to legislation should be determined by the Association and not by us.

Mr. JOSEPH B. WARNER: Mr. Chairman, I hope we shall not restrict our committee too much. I appreciate the difficulties that Mr. Clifford has described. I think we can trust to the good sense of the committee in deciding what they shall affirmatively recommend or oppose. What troubles me is the difficulty of defining these things by any phrase. If we exclude commercial subjects haven't we excluded bills of lading and warehouse receipts, which we have already acted on in this state? We cut away, it seems to me, a pretty large part of the matters which this Association can discuss. I do not see how it is practical to leave these matters to be determined wholly by a vote of this Association, which meets but once a year and at a time when their recommendation would probably be fruitless. I hope we shall leave the whole matter to our committee and that they will do as they have already done — exercise wisdom as to what they shall decide.

The PRESIDENT: Let me read the motion of Mr. Anderson as recorded by the Secretary: "Mr. Anderson moves that it is the sense of this Association that matters economic or commercial should not be excluded from the consideration

of the Committee on Legislation." That seems a harmless resolution.

Being put to vote, the resolution was unanimously adopted.

The PRESIDENT: The resolution is unanimously adopted; is there any action recommended?

Mr. BAILEY: I move that the report of the committee be accepted. That has not yet been done, I think.

The motion was carried and the report declared accepted.

The PRESIDENT: The next matter is the report of the Committee on Legal Education.

REPORT OF COMMITTEE ON LEGAL EDUCATION.

The following report was read by the chairman of the Committee, Mr. John W. Mason, of Northampton:

To the Massachusetts Bar Association:

At the last session of the Legislature three bills were introduced for the purpose of preventing the Board of Bar Examiners from raising the standard of general education required for admission to the bar, as they proposed to do. Your committee united with the Board of Bar Examiners in opposing these bills before the Judiciary Committee, and assisted in securing signatures of members of the bar to a remonstrance against the bills. Notwithstanding that this remonstrance was signed by a very large number of prominent members of the bar in all parts of the state, and the further fact that the Chief Justice of the Supreme Judicial Court had expressed his opposition to the proposed bills in a letter which was introduced before the Judiciary Committee, that committee seemed disposed to take the matter of making rules for admission to the bar very largely out of the hands of the Supreme Judicial Court. The attitude of the Judiciary Committee was such that it seemed to be the

part of wisdom to postpone the taking effect of the new requirements as to general education, and that course was pursued by the Bar Examiners with the consent of the Court.

The Section of Legal Education of the American Bar Association held two well attended meetings in Boston in August of this year.

Efforts are being made to secure the adoption of standard rules for admission to the Bar throughout the several states.

It was the opinion of practically all the speakers that the good of the community, as well as of the profession, required the establishment and maintenance of higher standards than have been hitherto enforced.

It was proposed to require law students to register in advance; to require a four-year course of study; to permit no one to register who could not show himself capable of passing a college entrance examination; and to insist upon more careful inquiry as to moral character.

Other rules were proposed, but these seemed to be the most important of those discussed.

There was some criticism of the custom of permitting students to prepare themselves by study in law offices instead of in the law schools. But there was too much difference of opinion, arising perhaps from different conditions in different parts of the country, to permit of any attempt to change the present system in this particular.

Other important matters, such as the subjects on which candidates for admission to the Bar should be examined, the question of fees, and other administrative details, were postponed to the next annual meeting for further discussion.

Respectfully submitted,

JOHN W. MASON,
BROOKS ADAMS,
J. H. BEALE,
J. B. WARNER,
Committee on Legal Education.

DECEMBER 28, 1911.

On motion, the report was accepted.

The PRESIDENT: The next matter is to hear the report of the Committee on Judicial Appointments.

REPORT OF COMMITTEE ON JUDICIAL APPOINTMENTS.

Mr. E. A. WHITMAN: The Committee on Judicial Appointments has had during the past year more than its share of duties. We do not recall a year in which a governor has been called upon to make so many appointments to our higher courts. Nine justices of the Superior Court and one of the Supreme Court have been appointed, together with the chief justice of the last-named court. The committee has had very cordial relations with the Governor, who has not only welcomed its suggestions but has on several occasions requested its aid. The committee has held meetings prior to the various appointments, which have been very fully attended, and has carefully considered the available candidates for the various positions and made recommendations to the Governor. Of the nine appointments to the Superior Court, five were taken from the recommendations of your committee. The appointment to the Supreme Court was also made in accordance with, although perhaps not in consequence of, our recommendation.

The committee held a joint meeting with the committee of the Boston Bar Association to recommend to the President of the United States a candidate for the position of Circuit Judge to fill the vacancy caused by the death of Judge Lowell. The recommendation of the joint committee, however, was not accepted by the President.

The committee find — and in this we think we are borne out by the experience of the Governor — that even with the recent increase of salaries the position of justice of the Superior Court does not tempt many men who are admirably fitted for the work of that court to leave private practice.

On motion, the report was accepted and ordered placed on file.

The PRESIDENT: Next is the report of the Committee on Grievances.

REPORT OF COMMITTEE ON GRIEVANCES.

The following report was read by Mr. James M. Morton, Jr., of Fall River.

The committee during the year has consisted of fifteen members. James M. Morton, Jr., of Fall River, has been Chairman and Hollis R. Bailey, of Cambridge, has been Secretary. In July, after the Association was incorporated, the committee was reappointed and organized anew by reëlecting its former officers. One of the committee, viz.: Patrick M. Keating, has been appointed by the Governor a Justice of the Superior Court. The committee has held five meetings. The disbarment case against David R. Radovsky, of Fall River, which was instituted during the year 1910, was prosecuted to a final decision, the judgment of the Court being that several of the charges were sustained and that the lawyer complained of should be disbarred.

In connection with this case there arose an important question as to the liability of the several counties to pay counsel employed to prosecute disbarment cases. The matter was carried to the Full Court and a decision has been handed down by which it is settled that the several counties are liable to pay the expenses of petitioners who institute disbarment proceedings including counsel fees approved by the Court. Thanks are due to James A. Lowell, Esq., who at the request of this committee argued the case before the Full Court. It may be noted here that it is customary for the petitioner soon after a case is begun to ask the Court to approve the employment of the attorney selected by the petitioner.

Five new complaints have been received during the year.

It was decided in the case of Edward T. Bannon, of New Bedford, to institute disbarment proceedings and the decision of the committee having been approved by the Executive

Committee a petition was filed in Court and the case will soon be ripe for hearing. Several complaints considered by the committee upon investigation were found to be either groundless or not of such a character as to warrant proceedings for disbarment. One complaint of a serious nature has recently been received and is being considered by the committee.

The committee believes that the work which it is doing is of great importance to the community and to the Bar.

It is already apparent that this Association is better able to deal with disbarment cases than the local associations outside of Suffolk County. Where all the lawyers in the county are personally acquainted, it is natural that any local committee should feel disinclined to act, even where the public welfare may require it.

JAMES M. MORTON, JR.,
Chairman.

DECEMBER 28, 1911.

On motion, the report was accepted and ordered placed on file.

The PRESIDENT: Next is the report of the Committee on Nominations.

The SECRETARY: Mr. Pillsbury, the chairman of that committee, asked me if he were not here this morning to present the report of the Committee on Nominations. The report of that committee has already been sent to all the members of the Association in the call for the meeting.

REPORT OF COMMITTEE ON NOMINATIONS.

November 23, 1911.

To the Secretary of the Massachusetts Bar Association:

The Committee on Nominations has attended to its duty and begs leave to report as follows:

For President:

CHARLES W. CLIFFORD.

For Vice-Presidents:

WILLIAM H. BROOKS.	SAMUEL K. HAMILTON.
JAMES E. COTTER.	JOHN C. HAMMOND.
JAMES R. DUNBAR.	HERBERT PARKER.

For Secretary:

ROBERT HOMANS.

For Treasurer:

CHARLES E. WARE.

For Executive Committee:

HOLLIS R. BAILEY	Middlesex.
HENRY H. BAKER	Barnstable.
PAUL R. BLACKMUR	Norfolk.
LOYED E. CHAMBERLAIN	Plymouth.
ROBERT G. DODGE	Essex.
WILLIAM H. DUNBAR	Middlesex.
LEE M. FRIEDMAN	Suffolk.
T. HOVEY GAGE	Worcester.
FREDERICK L. GREENE	Franklin.
CHARLES E. HIBBARD	Berkshire.
HENRY F. HURLBURT	Suffolk.
ANDREW J. JENNINGS	Bristol.
ROBERT A. KNIGHT	Hampden.
JOHN W. MASON	Hampshire.
WILLIAM H. NILES	Essex.
JAMES M. SWIFT	Bristol.
GEORGE S. TAFT	Worcester.
JAMES H. VALLEY	Suffolk.
JOSEPH B. WARNER	Suffolk.
ALDEN P. WHITE	Essex.
FREDERICK N. WIER	Middlesex.

For the Committee,

A. E. PILLSBURY,
Chairman.

The PRESIDENT: This is the report of the Nominating Committee and there have been no other nominations made under the provision that any nine members could make such nominations, therefore this report is before you. The next thing in order is the election of officers in pursuance of that suggestion.

Mr. BAILEY: I move that the nominees be declared elected. I believe it is not required to be by ballot.

The SECRETARY: I think not.

The motion was seconded and carried unanimously.

The PRESIDENT: The names read are accordingly elected to the respective offices.

The next matter before us is the reports of Special Committees.

Incorporation of the Association.

Mr. BAILEY: A year ago it was voted that the Executive Committee attend to the matter of incorporating the Association. I think at that time the reasons were stated to be that in disbarment proceedings it was much more efficacious to have for the petitioner the Association itself in its own capacity rather than the names of any individuals. The Executive Committee attended to that duty and have gotten everything in shape except the matter of adopting the seal for the corporation. The Executive Committee appointed a special committee consisting of Mr. Homans and myself to look into that matter and make suggestions directly to the annual meeting of the Association, and Mr. Homans has asked me to read the report of the committee:

The special committee on the preparation of a seal for the Association recommends that the seal of the Association be circular in form with the words, "Massachusetts Bar Asso-

ciation," and the date "1911" in the outer circle, with a pair of scales evenly balanced superimposed on an open book in the inner circle, surmounted by a crest consisting of a raised right arm holding a sword, and that the motto, "*Fiat Justitia*," be shown upon a scroll of ribbon in the lower portion of the inner circle. The coloring of the seal will be as follows:

The outer circle to be in blue with black lettering and outlined by gold lines; the scales to be in gold, the open book to be in white with black edges; the crest to be in red and black, the motto to be in blue letters, and the scroll or ribbon to be in pink; the background of the inner circle to be white.

Mr. BAILEY: I may say that the committee employed an engraver to aid and assist, and the engraver has made a sketch with substantially the colors indicated, showing you how it will look. The committee showed it to a few members and while it is too small for you to get much of a view, the committee think it would be a satisfactory seal. Of course in the ordinary use where it is stamped upon paper there would be no coloring, but we assume that the President and Secretary may like a colored seal upon their letterheads, and in order that there might be uniformity it seemed to us proper that it be indicated at the beginning.

The PRESIDENT: In regard to the last suggestion made by Mr. Bailey, the President and the Secretary, I assume, prefer the motto, "Suum cuique." Heretofore I have used a great deal of elision in order to save time. I now use it purely from my ignorance of heraldry. Therefore, if there is nothing to be said in reference to the seal, all those in favor of its adoption will say Aye. ("Aye.") Those opposed, No. (No response.) The seal is accordingly adopted.

Portraits of Chief Justice Knowlton and Chief Justice Holmes.

Mr. STOREY: Mr. President, it seemed appropriate to certain members of the Bar that some recognition should be made of Chief Justice Knowlton and at the same time of Chief Justice Holmes. On consideration it seemed best that it should take the form of a portrait in each case, and that the portrait of Chief Justice Knowlton should be hung in Springfield and that of Chief Justice Holmes in the Court House at Boston. I therefore offer the following resolution:

Voted, That a committee of fifteen be appointed by the President who shall designate one of the members as Chairman; that there shall be on such committee one member of the Bar from each county; that such committee be authorized to solicit subscriptions for the painting of portraits of Hon. Oliver Wendell Holmes and Hon. Marcus P. Knowlton, the two living ex-Chief Justices of the Supreme Judicial Court, and be further authorized to choose an artist or artists to paint these portraits, to arrange for sittings and to arrange for hanging the portrait of Chief Justice Holmes in the Court House in Boston, and that of Chief Justice Knowlton in the Court House at Springfield.

The resolution was unanimously adopted.

The PRESIDENT: Is there any further business to come before the Association? I suppose that it is understood that when we adjourn it will be to 2 o'clock, at which time Mr. Sherman, who is the son of the late General Sherman, will make an address upon the Workmen's Compensation Act, and then the subject will be open for discussion.

If there be no further business to come before us, a motion to adjourn to 2 o'clock is in order.

On motion, it was voted to adjourn until 2 P.M.

AFTERNOON SESSION.

The Association met at 2 P.M. in Room 240, State House, the President in the chair.

The PRESIDENT: Gentlemen, I have the pleasure of introducing to you P. Tecumseh Sherman, Esq., a member of the New York Bar and also one of the Legal Committee of the National Civic Federation. He will speak upon the subject which will be before you for consideration at the conclusion of his address, namely, "Workmen's Compensation for Injuries." (Applause.)

WORKMEN'S COMPENSATION ACTS.

BY

P. TECUMSEH SHERMAN, ESQ.

There exists a branch of law which is popularly termed the "law of compensation" and which in its rules is as definite and formulate as our law of negligence. The gist of that law is that it gives to workmen who are accidentally injured in the course of their employment — or, if they are killed, to their dependents — a right to recover one-half or approximately one-half of their consequential wage losses — actual or estimated — regardless of fault in the causation of the accident. That law prevails in all the countries of Europe except Switzerland, and generally in the colonies of Great Britain — in some countries being restricted in application to more hazardous employments and in others having wider scope. The European compensation laws are all exclusive — the majority are absolutely exclusive, which means that the imposed liability is exclusive of any other liability to injured employees. In the other countries the laws are almost but not quite exclusive; that is, they retain or impose an alternative liability for full damages in tort or

for increased compensation in those exceptional cases where it is proved that the injuries have been caused by the serious misconduct of the employer; and, on the other hand, they relieve the employer from all liability for injuries proved to have been caused by the serious or serious and wilful misconduct of the injured workmen. In the United States our first effort to copy these European precedents (the New York Compulsory Compensation Act of 1910, which in the Ives case was held unconstitutional by the Court of Appeals) differed fundamentally from the European laws in that it was not at all exclusive but entirely cumulative; that is, it did not repeal any existing liabilities in tort but simply superimposed an alternative liability for compensation to the liabilities already existing. The compensation laws enacted during the past year by various of our States are all elective, — except the Washington compulsory insurance law, which, strictly speaking, is not a compensation law, for it insures, not compensation proportioned to wage loss, but merely a flat poor relief. The European compensation laws, on the contrary, are all compulsory. In my opinion all attempts to accomplish anything approaching the benefits of those European compulsory laws by means of elective laws can result only in serious disappointment. Therefore, if we are to be guided by European experience, a compulsory exclusive compensation law should be our goal.

There is a widespread idea that the objection of unconstitutionality, which has been raised against the adoption of such a law, may be evaded by resorting to the taxation of employers or of industries to raise a fund from which the state shall pay the compensation, thus avoiding the imposition of any direct liability upon the employer. The idea also is being assiduously propagated that by so doing we would be copying what misleadingly is termed the Continental system of social insurance, as though the accident insurance laws of the Continent generally were based upon a principle different from the accident liability law of England. In my opinion both of those ideas are wrong. The majority of the Continental accident laws, like the English law, place the liability for compensation primarily

on the employer; but some of them allow him and some of them require him to insure the payment of the liability in one of several specified ways — in some cases, in a state insurance fund. If he does so, he is relieved from his original liability. In Germany and Austria-Hungary an employer's mutual insurance association — a quasi-corporation, with power to levy differentiated premium rates and to make and enforce safety regulations — is interposed between the individual employer and the injured employees. The employer's liability is to the association, the association being liable to the injured employees, and the State regulating all and guaranteeing the payment of the compensation. In Norway alone are employers taxed by the state for a fund from which the state pays the compensation. All those laws, therefore, except that of Norway — and, though somewhat confusedly, even in Norway — are based upon the principle that the employer is legally liable to pay the cost of compensation. Consequently no constitutional provision supposed to stand in the way of employer's liability for compensation is avoided by resorting to any of the European insurance schemes. On the contrary any such scheme would involve the imposition of an additional obligation, namely, the obligation to insure the payment of the compensation liability. In my opinion the Norwegian scheme of state insurance is fraught with too grave political and economic dangers and would too unavoidably entail industrial harm to be experimented with.

I will, therefore, confine my discussion to the question: Is a compulsory exclusive compensation law constitutional?

My first proposition is as follows:

In the organized industries, and particularly in those in which there are technical "trade risks," the imposition of the exclusive compensation liability is a reasonable regulation for the prevention of accidents.

The New York Court of Appeals in the Ives case (201 N.Y. 271, at p. 302) seems to lay down the abstract doctrine that the imposition of an absolute liability without proof of fault — such as the compensation liability — cannot be sustained as a "regulation" under the police power;

that, except as the common law liability for fault may serve as a regulation, the only constitutional way to regulate is to impose upon employers positive duties and a liability in damages for the violation of any such duty.

But in Atchison R.R. Co. *v.* Matthews, 174 U.S. 96 at p. 102, the U.S. Supreme Court thus disposes of that doctrine: "If in order to accomplish a given beneficial result — a result which depends upon the action of a corporation — the legislature has the power to prescribe a specific duty and punish a failure to comply with it by a penalty, . . . has it not equal power to prescribe the same penalty for failing to accomplish the same result, leaving to the corporation the selection of the means it deems best therefor? Does the power of the legislature depend on the method it pursues to accomplish the result?"

And in The People *ex rel* Davis-Smith Co. *v.* State Auditor (decided September 27, 1911), the Supreme Court of Washington held in principle that a liability without fault may be sustained as a "regulation" under the police power.

The strict abstractiveness of the New York Court's doctrine is shown by the fact that it would limit the police power of the legislature to regulate to a method — the tort liability for full damages as a penalty for violation of a duty — which generally has been abandoned in other countries, because tried there and found ineffective in practice, and it would prevent the adoption of another method — the compensation liability — which generally has been substituted in other countries and which is supported by expert opinion as an efficient regulation for accident prevention.

In this connection it may be noted that not in all the compensation law countries has the liability of the employer for full damages (or for increased compensation) for injuries caused by violation of legal duties been altogether abolished; but that in many of them that liability is retained in exceptional cases. That practice, however, indicates merely a difference of opinion as to the most effective (and most just) *extension* of the compensation liability as an exclusive remedy, and not a dissent from the

proposition that generally the exclusive compensation liability is a most effective regulation for accident prevention.

It should be noted also that the compensation law liability is not proposed as the sole or even as the principal regulation for safety. In every one of the compensation law countries the state still imposes upon employers the legal duty of compliance with specific safety regulations under appropriate penalties, — penalties sometimes equal to "damages" and sometimes for the benefit of the injured employee; but, with some exceptions of little practical importance, such regulations are applied and enforced exclusively by expert state officials and not by juries or otherwise in private litigation, and the liability for violation is to the state (or, as in Germany, to employers' insurance associations) and not to injured employees. There is to be found, occasionally, in European technical literature an opinion which is contrary to the now prevailing opinion of experts, that the compensation liability *by itself* does not *directly* effect any appreciable reduction in accidents. That opinion may be approximately correct, and yet it is not contrary to the proposition that under a system of positive regulations, administered only by state experts (or, as in Germany, by inspectors of employers' associations) and not in private litigation, the exclusive compensation liability is the best system of regulation for accident prevention. That is the system which prevails in the majority of European countries and their colonies, and which is supported by the preponderance of expert opinion.

As part of such a system, therefore, the compensation liability would be a reasonable regulation for accident prevention, and consequently a lawful exercise of the "police power" under a constitution interpreted in the light of reason.

In order to make clear what is contended for the prevailing European system, above explained, as a police regulation, I will present a brief epitome of its advantages preceded by a like epitome of the relative disadvantages of the American system — under which latter the employer is

liable for "damages" both for common law fault and for failure to comply with statutory duties.

(1.) The liability for full damages for common law fault would be effective for accident prevention if its theories were correctly carried out in practice; but in actual experience it miscarries too often and results in a proportion of incorrect decisions too high to exert any general and material influence upon employers to induce them to exercise greater care and adopt safer methods in order to avoid accidents — since in fact care insures no immunity from legal punishment for alleged lack of care, and lack of care often incurs no penalty.

(2.) The unconditional liability for full damages for violation of statutory safety regulations deprives such regulations of much of their effectiveness and is productive of much indirect harm. To be entirely beneficial proper safety regulations must be highly technical and must be applied uniformly and correctly by experts of technical knowledge and experience. Such, to some degree, is their application when enforced solely as regulations for safety by state inspectors (or, as in Germany, by inspectors of employers' insurance associations). But when used as criteria of liability in private litigation they are continually applied incorrectly by judges and by juries, — misguided by abstract errors or by sympathy or by partial or false evidence. Thereby employers' duties are rendered chaotically uncertain, and the enforcement of industrially correct applications of such regulations by the state's experts is seriously thwarted; for it is impossible for administrative officers correctly to apply such regulations when courts and juries are construing and applying them incorrectly.

(3.) So long as violations of statutory safety regulations constitute a ground of liability for damages, such regulations often will be designed — as some of our American regulations *are* designed — not to prevent accidents, but to extend the conditions under which the employer shall be liable for damages. On the other hand, they often will not be framed in the form most useful to promote safety but in

some less effective form designed to avoid abuses in private litigation.

(4.) The liability for damages conditioned upon proof of tort places employers and injured employees, immediately after accidents, in legal relations where it is to the advantage of the parties respectively to hide or to distort some part of the evidence as to the causes of those accidents. That seriously interferes with official investigation of those causes. But scientific investigation and study of the true causes of actual accidents is a prerequisite to obtaining the knowledge necessary to discover methods and to formulate effective regulations for their prevention. So long, therefore, as our tort practice prevails our American methods and regulations for industrial accident prevention will be based upon incomplete observations and to a high degree will continue to be abstract and consequently ineffective or harmful.

(5.) In that the liability for full damages for violation of safety regulations places the entire responsibility for compliance upon the employer it is in itself to a degree a danger breeding practice. For compliance with many of the duties imposed, or which properly may be imposed upon the employer, by such regulations — especially those relating to maintenance and discipline — requires the coöperation of employees; and consequently in the last analysis the responsibility for non-compliance is a joint responsibility of the employer and his employees. In such cases, while in general probably it is more expedient for the state to impose the obligation upon the employer and to hold him absolutely liable to it — *i.e.*, to the state — yet it is not conducive to discipline and safety to hold him liable also in *full* damages to his employees for what may be partially their own faults. And even in cases where the liability for full damages for violation of a regulation may be placed *justly* upon the employer it is not entirely conducive to safety so to do; for that promotes in the minds of workingpeople the idea that they are free from all responsibility in the matter, and, like infants, may accept and continue in any employments however obviously dan-

gerous, resting supine in the belief that it is the duty of a parental state to discover their danger and to protect them from it or to compensate them fully for any consequent losses. That is the antithesis of our old individualistic doctrine of assumption of risks, and errs by going too far in the opposite direction. In so far as the object of state industrial regulation may be to prevent danger each extreme should be avoided and the law should foster the idea of a joint duty and a joint responsibility.

As against the foregoing disadvantages of our tort liability system the exclusive compensation system offers the following advantages:

(1.) It confines the use of statutory safety regulations to their primary purpose, namely, to be applied by official experts so as to bring about safer working conditions. Thereby it avoids the malign consequences of their secondary use, as criteria of employers' liability in private litigation.

(2.) It furnishes no motive, after an accident, for either the employer or the injured employee to suppress or to distort the facts relative to its causes. Thereby it throws the door wide open to the scientific investigation and determination of accident causation.

(3.) It furnishes a constant incentive to care and discipline on the part of employees and promotes in their minds the idea of joint responsibility for safety, by leaving those injured to bear a share of the consequences of accidents, however caused.

(4.) It furnishes a direct and constant economic incentive to employers to exercise a high degree of care and to go to great expense in order to reduce accidents, however caused, and the seriousness of their consequences; for it makes the cost of compensating for approximately all work injuries a regular item in the cost of business which cannot be avoided and which can be reduced only by reducing accidents. That is the great direct advantage of the compensation liability as a regulation for safety — to be distinguished from its indirect advantages just stated (*i.e.*, (1) and (2) above). As to the value of this advantage

there is some difference of opinion, already alluded to; but that it is great is now the overwhelming preponderance of expert opinion. Specific safety regulations cannot, with net benefit, cover the entire field of accident prevention. They must be limited to prescribing practices which already have been demonstrated to be effective and economically practicable. If they go beyond that they will paralyze individual initiative and industrial progress, and will do economic harm far in excess of any good accomplished in the line of accident prevention. Being thus limited in their proper scope, such regulations should leave outside of their application a vast field of choice open to each individual employer between methods, processes or practices, to be adopted in his business, of varying degrees of inherent danger. In that field it is important that there should exist some economic motive for employers to select the less dangerous of alternative methods, processes, and practices. Such a motive is supplied by the compensation liability and not by the tort liability, with its doctrine of assumption of risks. In this connection it is to be noted that any system of insurance by which the individual employer is enabled (if his risks are inordinate) or compelled (if his risks are below the average) to insure his liability at the same rate as his competitors will do away with that economic motive. Therefore in order to procure this advantage it is essential that there should be differentiated insurance rates, fairly proportioned to risks. Because they fail in practice to maintain this essential, state insurance schemes (not including the German scheme which is not state insurance) sacrifice this advantage. As the New York State Superintendent of Insurance, in a recent address touching upon this question, put it: "flat rate State insurance would remove the incentive to works of prevention and leave this kind of conservation to pure philanthropy and public spirit, unstimulated by self interest."

Besides the "police power," the legislature possesses another power under which the compensation law liability, in certain applications, may be sustained; namely, the power to enact laws fixing the rights and liabilities of per-

sons in their private relations. That power is plenary, except as it may be restricted by constitutional limitations, — the constitutional limitation with which we are principally concerned being found in the "due process" clause of our constitutions.

"Due process of law," in application to the exercise of this power, has been given two radically different interpretations. The one, laid down by the New York Court of Appeals in the Ives case, would prevent any material departure from the principles of the Common Law, as it was at the time of the adoption of our constitutions. The other, to be found in the recent decision of the Supreme Court of Washington and in many opinions of the Supreme Court of the United States, is more elastic and conforms more to the historic purpose of the clause. According to this latter interpretation "due process of law" requires nothing more than that the power of justice shall be exercised by the legislature according to settled principles of private right and distributive justice, and not arbitrarily, unreasonably, nor in a purely empiric manner. The gist of this is that to be sustained as a valid exercise of the power of justice a legislative enactment must stand the test of reason as to its equity and fairness. (For a convincing review of Federal Court decisions on this point, see brief of Alfred P. Thom, Esq., in Report of the Congressional Commission on Employers' Liability, Senate Document No. 90, 1911).

My further proposition is that:

In application to hazardous industries, a compulsory exclusive compensation law imposes upon employers a liability which is just and fair and is based upon settled juridical principles.

There is in America a widespread impression that the compensation laws of Europe were not based upon any conceptions of private justice or equity, but were mere unprincipled measures of public expediency, like the English old age pension law. That is an error. And it seems to me that the decision of the New York Court of Appeals in the Ives case resulted from that error. The

prevalence of that error is due to two causes: (1.) Because some of the European accident compensation laws are embodied in insurance systems conjoined with practices based upon paternalistic or communistic principles. (2.) Because abroad courts do not review the validity of statutes and consequently there have been no decisions analyzing and presenting the juridical principles of justice upon which those laws are based. To find those principles it is necessary to turn back and to search the records of the debates which preceded the adoption of such laws, to study their development, to analyze their provisions, and to search industrial literature for expositions of the reasons for some of their rules.

At the beginning of the last century in all the countries of Western Europe the negligence branch of the law of master and servant was approximately identical with our common law of tort. The sole exception was the Maritime Law, whereunder to a certain extent the ship's master, regardless of fault, was liable for the care of his injured seamen. The reason for that exception was that to an unusual degree the seaman for his safety is dependent on the skill and care of the one directing the work and on the skill and care of his fellow workmen. When mining became of such importance as to attract judicial and legislative attention the German law placed it in the same category as navigation — because it has the same distinguishing characteristics — and, regardless of fault, held the mine master liable to a certain extent for the care of his injured miners; but in the other countries the common tort rule continued to be applied to mining. And when railroads, factories, engineering works and other industries with distinctively modern forms came into existence — although they also possessed the distinguishing characteristics of navigation — all countries at first applied the common tort rule to them also. But, in application to these novel conditions, that law soon came to be recognized as highly unjust in theory and as yet more unjust in practice. The line of remedial amendment first tried was that which we have recently been trying in America, namely, to modify or

to reverse the subsidiary rules of the law of tort — the fellow servant rule, the rule of contributory negligence, etc. — and to impose upon employers positive duties, making failure to comply with such duties a ground of liability in tort. But in practice those changes were soon found to result in no improvement and in theory met with almost universal condemnation. At that stage of general dissatisfaction with the tort law there sprang up a new school of thought, which may be described as the school of industrial science. This school sought to reframe — and throughout Europe succeeded in having reframed — the law of master and servant, in its application to the distinctively modern forms of employment, so as to conform to the altered conditions and to the doctrines of modern science. Their ideas form the framework of the law of compensation, and, translated into juristic language, may be epitomized roughly as follows:

Accidents "arising out of and in the course of employment" in hazardous industries are theoretically divisible into three general classes: (1) Those caused by the fault or faults of the master or of the injured servant or of both. (2) Those caused by the practically unpreventable risks of the industry as carried on — *i.e.*, by "trade risks," — which, in what are technically classed as "organized" industries, include the risks from faults of carefully selected fellow servants. (3) Those caused both by fault and by trade risks.

The cause of an accident of course is the sum of the antecedent conditions which have led up to its occurrence. Responsibility for an accident cannot be predicated solely upon the proximate cause or proximate fault; but if anywhere in the chain of causation (not too remote to be material) there be any faults or trade risks, they all must be ascertained, weighed and measured in order to determine responsibility — whether for purposes of justice or of industrial betterment.

Injuries caused not by fault as above specified but by trade risks, are the practically inevitable consequences of the particular methods of production or service to which

they are incident. The economic loss from such injuries is, therefore, part of the economic cost of such production or service. That item of cost is now borne wholly by the injured employees, and is not paid for in wages. But rightly it should be paid by the industry and should enter into the price of the product — for otherwise we have the unrighteous condition, which now prevails in America, where employers and consumers get a product at less than cost, and in the production of a product workmen sell their part at less than the cost to them. To prevent this injustice between private persons in private relations, the law should impute to or should impose upon the employer a contract or a legal obligation to pay to his injured workmen the amount of their respective losses in earning power from injuries caused by trade risks.

For injuries from an accident in his business, then, the compensation law *in the abstract:* (1) would make the employer liable in damages to the degree in which it was caused by his faults; (2) would make him liable in quasi-contract for the injured workman's loss in earning power to the degree in which it was caused by trade risks, and (3) would hold him free from liability to the degree in which it was caused by the injured workman's fault or by causes not arising out of the employment.

But such an abstract rule of absolute justice would be unworkable in practice — even more impossible to apply correctly than the existing rule, which, admittedly at a sacrifice in absolute justice, simplifies the problem by using generally the proximate fault alone as the determinative factor in fixing liability. Industrial experience, particularly in application to accidents occurring under technical industrial conditions, is absolutely convincing that in a system of applied jurisprudence fault as a criterion of liability is radically unfit for use: (1) Because "fault" is a term of uncertain and indefinite meaning when applied to concrete cases. (2) Because the question of fault is peculiarly liable to incorrect decision through sympathy, prejudice or ignorance. (3) Because in a large proportion of cases the facts upon which to predicate a correct judgment are prac-

tically unascertainable. (4) Because in a yet larger proportion of cases they are unascertainable by judicial process. (5) Because the expense and delay unavoidably incident to a determination by judicial process are so great as indirectly to defeat justice in the majority of cases.

But the law should seek to do justice in fact; and it is more righteous to have a rule of only average justice which carries out its theories in practice than to adhere to the use of any rule which, although more just in the abstract, grossly miscarries in practice and results in general injustice in fact. The compensation law, therefore, does not try to apply its abstract rule in practice, but resorts to a modification based upon an application of the doctrine of averages. It being calculated that according to the abstract rule before stated the employer on the average would be liable for about one-half of the losses in earning power from injuries in his business, that measure of liability is adopted as the general rule. This rule has been thoroughly tested in practice and proved to result in prompt, certain, and uniform average justice, — in a much higher degree of justice in fact than the tort rule, — and where tried is greatly preferred by employers and employees over the tort rule. Under some of the compensation laws the tort rule is continued to this extent, that where the employer is proved to have been seriously at fault he is still liable in damages, and where the injured workman is proved to have been seriously at fault he is still denied the right to any relief.

It is to be noted that, more particularly or specifically in application to accidents occurring under characteristically modern industrial conditions (or more accurately under conditions analogous to those of navigation), the theory of justice above outlined rejects the following rules of the law of tort, to wit, — the rule of proximate cause, the rule of the burden of proof, the rule of contributory negligence and its reverse, the fellow servant rule and the rule of assumption of risks. Time forbids an exposition of the reasons for their rejection; but it is important to know that it was

on the score of their injustice that they were attacked and condemned.

We come now to the main objection to the compensation law, towards which I have been hurrying, — that it imposes a liability without fault, and that thereby it runs counter to the doctrine, promulgated by the New York Court of Appeals in the Ives case as a fundamental and unalterable principle of our system of jurisprudence, — that, without contract, one cannot be made liable save for fault or for the violation of a positive legal duty. At first that doctrine sounds well. But it has been expressly repudiated by the United States Supreme Court in Chicago Railway Co. *v.* Zernicke, 183 U.S. 582. And it appears preposterous to any one who has counted up the many conditions under which our law imposes upon persons, who are personally without fault and who have made no contracts, legal liabilities for imputed faults or imputed contracts — which imputations are pure fictions. The fact, then, is that by resorting to fictions our law frequently does hold one liable without fault or contract or violation of positive legal duty. The only question is, under what conditions may it resort to such fictions? The rule, which is older than the Justinian Code and which was introduced into the English law by early Chancellors, is that the law may and will impute a fault or a contract (or, as the Civil law expresses it, impose an obligation *quasi ex delicto* or *quasi ex contractu*) where it is *right* to do so. That rule has not been abolished or restricted by the Constitution. If the rule of *respondeat superior*, which imputes the fault of a servant to his master, can rest upon the simple proposition that where one of two innocent persons must suffer, it is right that the master of the servant at fault should be the one to do so, why may not the rule of the compensation law, which imputes to the employer a contract to compensate for injuries, caused without his fault but by his agencies, rest upon the proposition that as between two innocent persons it is *right* that he whose agencies have caused the injury should be the one to suffer the loss? Or if the legal mind raises a subtle distinction between the imputation of a fictitious contract and

the fictitious imputation of a real fault of an agent or servant (which latter has been decided to be "due process"), why cannot the faults of the employer's agents *and agencies*, — *i.e.*, the faults of his personnel, organization, plant, equipment, machinery, processes, and practices — all rightly be imputed to him, and the liability for compensation for trade risks be sustained as a liability *quasi ex delicto*? For according to industrial theories of causation, trade risks arise from faults of the employer's agents and agencies — faults which are not personal to the employer, because unavoidable by due care and outlay on his part, but which nevertheless are real faults. The compensation law resorts to the imputation of a contract rather than to the imputation of a fault, because it appeals more to the sense of justice in the industrial mind to require the employer simply to do what is right, than to punish him, although faultless, as for a moral wrong. It is the great social vice of our law of tort that in practice it recklessly ascribes moral wrong where there is none, and thereby stirs up a false sense of mutual wrongs between employers and employees.

We now reach the crux of the constitutional question: Why is it *right* that the employer should pay the economic losses from injuries to his employees caused by trade risks in his business?

There are two lines of reasoning in support of that conclusion:

The first, when presented in an abbreviated form to the New York Court of Appeals in the Ives case, was rejected on the ground that it is based only upon economic and sociological theories. That is not a fair statement of the case. It is based upon economic facts and conditions and upon a juridical doctrine two thousand years old. Our existing rule of assumption of risks, on the contrary, is based upon an obsolete economic theory, namely: that workmen are free to accept or to reject hazardous employment, and, consequently, that when they accept such employment they should be deemed to contract freely to assume its risks, and that in hazardous occupations wages

are higher in proportion to the hazard so as to compensate for such risks. But that economic theory is now universally rejected because demonstrated to be absolutely at variance with facts. It is as certain as the existence of the sun that the vast majority of working people now employed in hazardous industries are not economically free to accept or to reject such employment: and that their wages are not at all in proportion to their risks. In effect, therefore, the imputation to them of a free contract to assume those risks is a legal fiction contrary to the facts. The contract in fact is a forced contract, which if it is unfair the law should forbid. And it is unfair, if in right and justice the workmen should be paid for their risks or for their wage losses from those risks; for in fact — and this is a conclusion of fact, which can be demonstrated, and not an abstract theory — they are not so paid. But injuries from trade risks being practically the inevitable consequences of the particular methods of production to which they are incident, the economic loss therefrom is part of the economic cost of such production. Therefore, in right it ought to be paid to the injured workmen, primarily by the employer, and ultimately by the consumers of the product; otherwise the employer or those consumers get something at less than the cost of production, at the expense of a class (the working-people) who are economically at a disadvantage. That is not right. It is an unjust enrichment of one person or of one class at the expense of another class. Now there is in the law a doctrine known as the doctrine of unjust enrichment, to be found fully developed as early as the Justinian Code (see Dig. 50, 17, 206), according to which doctrine, in such cases, the law will and should impute a contract, or impose an obligation *quasi ex contractu*, to remedy the injustice. There being, then, an injustice in private industrial relations and there being also an established principle of justice upon which a remedy can be based, does the "due process" clause, which was designed to secure justice, prevent the application of that principle so as to remedy that injustice? This argument may appear novel, but if so, the novelty is not in the principle of law adduced, but

in the facts. And the facts are novel to American jurists only because in this particular they have closed their eyes to industrial facts and economic conditions and devoted their attention to abstractions. (For a different presentation of this point see Address by Dean Wm. Draper Lewis, Annals of American Academy of Political and Social Science, July, 1911).

The second line of reasoning in support of the *rightness* of employer's liability for trade risks in hazardous employments turns upon the question of responsibility for the lawful use of dangerous instrumentalities and the application thereto of the principle contained in the maxim *sic utere tuo ut alienum non laedas*. Sometimes the question of liability is stated abstractly as follows: Ought A, the employer, be compelled to compensate for an injury suffered by B, the employee, from an accident for which A, *by hypothesis, is not in any sense responsible?* That asserted hypothesis is false, and betrays the fallacy of the doctrine of no liability without fault. It is the employer's dangerous instrumentalities which give rise to the trade risks, it is he who for his own profit * brings his employees into contact with those dangerous instrumentalities and subjects them to those risks, and for injuries due to those risks he is consequently the *causa causans* — the responsible cause. Therefore, in one most important sense he is very much responsible. In his work on The Common Law, Mr. Justice Holmes points out that there are two juridical theories of responsibility; the first based exclusively upon *moral* wrong, and the second upon the principle that a man acts at his peril, and that if his act is voluntary and damage ensues, it is immaterial that it was not intended nor due to negligence. This second principle, limited in application to acts relative to dangerous things and conditions, is to be found in many decisions of our Federal and state courts as well as in the leading English case of Rylands *v.* Fletcher (L.R. 1 Exch. 282). While in our Federal courts and in many of our states the doctrine of Rylands *v.* Fletcher may not be accepted as common law, yet it cannot logically be

* Cf. Hart *v.* West. R.R. Co., 13 Metc. 99, 103–4.

contended that the principle upon which it is based — the principle of absolute liability without moral fault for the use or maintenance of dangerous things or conditions — was so definitely rejected or limited at the time of the adoption of our Constitutions that any application or extension of it would be contrary to our *fundamental* principles of jurisprudence. For since that time its application has been extended by statutes, which statutes have been sustained by the courts. Thus in 1873 the legislature of New York passed an act making a person who leases premises, knowing that intoxicating liquor is to be sold therein, liable in damages for injuries caused by an intoxicated person, who has procured his liquor at the premises so leased; and the Court of Appeals held that, although the letting of premises for the sale of liquor is lawful, yet that it was "due process of law" and a valid extension of the application of the principle *sic utere tuo ut alienum non laedas* to impose upon the landlord a liability for the acts of the intoxicated person, since the act of letting is in the chain of causation (Bertholf *v.* O'Reilly, 74 N.Y. 509). And the United States Supreme Court, in St. L. & S. F. R'y *v.* Mathews, 165 U.S. 1, 9, in 1897, held valid a state statute which imposed upon railroads a liability, without fault, for damages from fires caused by its locomotives, although the common law of that state was to the contrary. In the course of its unanimous opinion, by Justice Gray, the Court said, quoting Lord Bramwell: "It is just and reasonable that if a person uses a dangerous machine he should pay for the damage it occasions; if the reward he gains for the use of the machine will not pay for the damage, it is mischievous to the public and ought to be suppressed, for the loss ought not to be borne by the community or the injured person. If the use of the machine is profitable, the owner ought to pay compensation for the damage." Since, then, the rule of absolute liability without fault for injuries caused by the use of dangerous instrumentalities is in our jurisprudence, and since its scope has been from time to time extended by legislative enactments to new applications, all without violating the "due process clause," the burden of proof is upon those who

assert it to point out and to define what principle of "due process" forbids the further extension of that rule so as to apply to dangerous industries, where the popular sense of justice demands it? If there be no such principle, and if it can be reasonably maintained that it is unjust to impute to workmen a fictitious contract of assumption of risks or to allow them to be forced to contract to assume trade risks, then the legislature has the power to impose upon the employer a liability for trade risks; and the exercise of that power would be based upon a juridical principle — *sic utere tuo ut alienum non laedas.*

Not to be misled as to the practical effect of this doctrine of employers' liability for trade risks, it should be borne in mind that under this doctrine the employer is *entirely* responsible only for accidents caused *entirely* by trade risks, and that there are very few such accidents. In the large majority of accidents caused *principally* by trade risks various minor faults also enter into the chain of causation and must be estimated in measuring the responsibility.

I trust that I have made plain my opinion, and that it is based upon principles of justice and of public policy, that to be just and expedient a compensation law should be compulsory and approximately exclusive, and that it should apply primarily to hazardous employments, — with this distinction, however, that where a comparatively safe industry is so organized that for his safety the individual workman is necessarily dependent upon others, a peculiar risk arises which renders the application of the compensation liability to that employment most just and expedient; and, on the other hand, that where, in a comparatively dangerous employment, the employee is the master of his own safety or where he is paid for the hazard, the reasons of justice and public policy for the compensation liability do not apply.

Mr. SHERMAN: Mr. President, I think my time is up. I intended to say a few words about your Massachusetts

law, but I have taken so much of your time and covered my main point that I will therefore close.

Mr. BAILEY: Mr. President, as the speaker was a little late in beginning, I move that he have ten minutes to speak about the Massachusetts Act. I am sure we shall all be glad to hear what he has to say about that.

The PRESIDENT: I am sure we all accede to that.

Mr. SHERMAN: I have very little more to say, just touching on the subject of insurance.

In many of the European countries the employers' legal obligation to pay compensation, from its inception, has been coupled with a further obligation to insure its payment. These two obligations are entirely distinct and independent. Insurance is a difficult economic problem, and some of the European methods for its solution, about which there is much loose thinking and writing, are extremely dangerous. Common sense, therefore, dictates that the question of what shall be the employer's liability should be kept distinct from the question of insuring its payment; and that we must first decide fixedly what that liability shall be, before we can best devise the methods and means for safely and economically insuring it, — if it be decided that the employer should be compelled to insure it. But in America we are rushing ahead, confusing these two questions, and producing hodge-podge measures — such as the Ohio law — which sacrifice many of the advantages of the compensation law for dangerous and unsound methods of insurance.

Your Massachusetts Act of 1911, although conservative, is subject to some criticism in this respect. By it your state has undertaken to organize a corporation to insure compensation for losses sustained in private employment. But why, if the state should do that, should it not also organize corporations to insure compensation for private losses from fire, sickness, and old age? And if the state should *organize* such corporations, why should it not *conduct* them? To my mind you have needlessly crossed the

dividing line between state initiative in private affairs and state regulation of private initiative. And the elective features of your Act produce a condition of law which to the practical mind is revolting. That Act establishes as the fundamental law of this Commonwealth what is popularly termed the rule of "wide open" employer's liability, *i.e.*, the liability in tort without defences. The fundamental law should be just; but you have not adopted that rule because of a belief in its justice, but have resorted to it as a club to force employers to contract out of it and to insure compensation instead; and, lest employees should refuse so to "contract out," you have resorted to the expedient of denying to them certain rights under that rule in case they do so. Now, either that "wide open" liability is just or it is unjust. If it is just, you should not deny its full benefits to workmen who refuse to contract out of it. If it is unjust, you should not impose it upon employers for any purpose, and particularly not for the purpose of compelling them indirectly to do something that, you fear, it would not be due process of law to compel them directly to do. In short, while sympathizing with the purpose of your law and recognizing in it many points of merit, it nevertheless seems to me that you have adopted a system of unprincipled political opportunism, and that you have made no material progress towards a solution of the problem of establishing a just law of employer's liability or towards the solution of the problem of insuring workmen.

In my opinion it is preposterous for our profession, bench or bar, to go before the common sense of an enlightened people with the proposition that the "due process of law" clause of our constitutions permits such a medley of wrong and evasion as is to be found in our "elective" compensation laws, and yet forbids the adoption of a consistent rule of average justice and sound public policy, such as would be established by the adoption of a compulsory exclusive compensation law.

The PRESIDENT: The paper has certainly opened a wide field for discussion, and the adjourned business of this

morning makes that discussion particular as well as general. It is open now for any member to speak upon the subject of workmen's compensation for injuries. (After a pause.) Is there a report to be presented, Mr. Niles?

Mr. NILES: Are you ready for this?

The PRESIDENT: Yes.

Mr. NILES: Mr. President and gentlemen: You will see that this report that we have made has not undertaken to deal at all with the subject-matter that it was understood was to be presented to you by the gentleman who has so ably addressed us, and that general question which I say we have not undertaken to deal with at all, of course, is before you as a distinct and separate proposition. I will read the report. I will read a part of the report, at any rate, and then I will see what direction we shall take as to the balance. Some of you may not have copies of the report, which is in print. We can furnish copies to any one who desires a copy, I think.

[Mr. Niles then read the report of the Committee on Legislation as printed on page 36.]

Now, there are thirteen propositions for amendment and change of the act, and it has occurred to me that the only manner in which we can deal with these several propositions is to take them up one by one and dispose of them as we go along, having discussion, if discussion is desired upon any one or upon all of the recommendations. I would like to know, Mr. President, if that meets the views of the chair.

Mr. FRIEDMAN: Mr. President, in order to get the views of the Association, I put in the form of a motion in the order of business that the discussion of the report of the Committee on Legislation be divided so as to take up first the discussion of general propositions and principles involved, and secondly, the recommendations of the Committee for amendments of the act one by one.

Mr. NILES: Mr. President, if I understood the invitation extended by the chair to the Association, it was that

the subject-matter of the address to which we had listened was open for discussion and comment, and there having been no discussion upon that general question, I assumed that we were ready now to pass on to a consideration of these questions, after which it seemed to me better if there is to be general discussion to take it at that time. I very much desire, Mr. President, that we dispose of these questions, because they all go to the legal aspects of the bill and none of them go to the economic aspects. I wait for the disposal of the motion.

Mr. FRIEDMAN: I am content to have the order of that discussion reversed and the recommendations of the committee first taken up one by one and then the general principles discussed afterwards.

Mr. NILES: That will accord with my wish.

The PRESIDENT: I think that is the proper order of the discussion, as your report is the first thing in order.

Mr. NILES: Now, as there are, Mr. President, as I said, thirteen distinct proposals for amendment, and as our time is limited probably to about two hours — as preparation, I assume, must be made for the banquet — I have prepared this motion which I desire, if you please, to submit to the meeting:

> "*Voted*, that in the discussion upon the report of the Committee on Legislation the remarks of each speaker shall be limited to ten minutes, and no gentleman who has spoken once shall speak again if any other member who has not spoken desires the floor."

I move, to test the sense of the meeting, that that vote be passed.

The motion was carried.

Mr. NILES: The first matter called to your attention by this report is entitled "First" and I think I had better read the section which it is proposed to amend, Section 17 of Part II. It reads as follows:

"Section 17. The notice (that is, notice of the injury) shall be served upon the Association, or an officer or agent thereof, or upon the subscriber, or upon one subscriber, if there are more subscribers than one, or upon any officer or agent of a corporation if the subscriber is a corporation, by delivering the same to the person on whom it is to be served, or leaving it at his residence or place of business, or by sending it by registered mail addressed to the person or corporation on whom it is to be served, at his last known residence or place of business."

Your committee recommends the amendment of Part II., Sect. 17, so that it shall read as follows: The notice shall be served upon the Association, or upon the subscriber, or upon one subscriber if there are more subscribers than one, by delivering the same to the person on whom it is to be served, or leaving it at his residence or place of business, or by sending it by registered mail addressed to the person on whom it is to be served, at his last known residence or place of business.

Mr. BAILEY: What does the change consist of, Mr. Niles?

Mr. NILES: The change is practically this: The act as it now reads allows notice to be served upon any agent of the employer. It does not define what the scope of his agency shall be, it does not specify that he shall have any connection whatever in the manufacture of goods or with the department of work or even the branch of work in which the injury was received. If I may be permitted to read it again:

"The notice shall be served upon the Association, or an officer or agent thereof, or upon the subscriber, or upon one subscriber, if there are more subscribers than one, or upon any officer or agent of a corporation if the subscriber is a corporation," etc.

The opinion of the committee was that that was entirely too broad and entirely too loose, and exposed not only the

manufacturer but the Association to grave dangers that ought to be avoided.

The PRESIDENT: Is there anything further to be said upon this section?

Mr. BAILEY: I would like to ask Mr. Niles in the case of a corporation upon whom could you make the service if you leave out the officers and agents?

Mr. NILES: The statute provides in all cases where service is to be made upon corporations the officers upon whom service may be made. As to municipal corporations, it is well specified upon whom service of notice may be made, and so as to manufacturing or business corporations; and generally it appeared to us that it was not safe to allow notice to be served upon any agent of any corporation, no matter where he was found, no matter how limited his agency might be, no matter how foreign he would be to deal with a matter of this sort, because corporations have agents that are responsible and agents sometimes that are not altogether so thoughtful and careful as to be allowed to deal with legal matters of this great importance.

Mr. BAILEY: Would you be satisfied — I just want to ask one more question — with the provision we used in the uniform law, "any agent upon whom process might lawfully be served"?

Mr. NILES: Our opinion was that this was equivalent to that. If it is not, these are only suggestions and it is not possible for us to undertake to perfect any section of this act. We only present our views to the legislature.

Mr. CHARLES WARREN: I wish to reënforce Mr. Bailey's remark in that respect. I think the statutes relating to service of notice all refer to service either of the specific notices referred to in the statute or else refer to service of legal process, and in most of these statutes outside of this state the specific insertion is made such as Mr. Bailey suggests, that the notice shall be served upon such person as the law gives the right to serve legal process upon. It seems to me that some such insertion is necessary in the committee's amendment. Otherwise I am in hearty sympathy with the committee's amendment.

Mr. NILES: We are entirely willing, Mr. President, to adopt that. Perhaps the motion had better come from some one else to adopt it with that qualification.

The PRESIDENT: That would be a motion to amend the suggestion of the committee, and therefore ought to be a little more specific than was suggested by Mr. Warren, which was an observation rather than a motion.

Mr. WARREN: I would move that the language used by the Commissioners on Uniform Legislation be inserted; I forget the precise term.

Mr. NILES: Mr. Bailey perhaps will prepare it.

Mr. BAILEY: The language here is: "Upon any officer or agent upon whom process may be served." I move that that be inserted in the amendment.

Mr. NILES: I second the motion.

The PRESIDENT: It is moved and seconded that the recommendation of the committee be amended by the substitution of those words. Those in favor of that amendment will say Aye —

Mr. GEORGE P. DRURY: Mr. President, may I be permitted to speak a moment before that motion is put?

The PRESIDENT: Certainly.

Mr. DRURY: As amended that would practically prohibit sending the notice by registered mail addressed to the corporation by its corporate title, which is the obvious way of sending such a notice.

Mr. NILES: I did not so understand the effect of Mr. Bailey's proposed amendment.

Mr. BAILEY: No.

Mr. NILES: I don't think he changes at all the part of our report relating to sending by registered mail.

Mr. DRURY: And I desire to call the attention of the meeting to the fact that the report as drawn prior to the amendment and as allowed to remain with that amendment would not provide for that, and I therefore move that the report be further amended by inserting after the word "person" in the last line but one the words "or corporation."

Mr. NILES: We have decisions — we have it clearly

settled already — that "person" covers "corporation." I object to that, sir, because our law is entirely clear that where the word "person" is used corporations may be regarded as within the meaning of that language. I object to that amendment, if you please, and hope that the motion of Mr. Bailey will prevail.

Mr. JOHN G. BRACKETT: It seems to me there is a great deal of virtue in the suggestions made by both of the last two speakers. It is certainly true that the word "person" includes a corporation as well as an actual person. On the other hand, it would seem that by the insertion of the words "or its" between the words "at his" and the words "last known," the difficulty would be entirely remedied; because although a corporation may be a person it is not a masculine person. Therefore, if it read "by registered mail addressed to the person on whom it is to be served at his or its last known residence or place of business," it would seem to me to cure the difficulty which Mr. Drury suggested and be entirely consistent with the suggestion of Mr. Niles.

Mr. NILES: I am content with that.

Mr. DRURY: I am content with that.

The PRESIDENT: In the interest, if you will excuse me for a moment, of uniform legislation, why would it not be well to adopt the form that has been prepared by the conference so far as the service of this notice?

Mr. NILES: I do not see as this as amended by the motion of Brother Bailey differs at all from the provision that they have recommended. I think I am right, Mr. Bailey; it is in substance.

Mr. BAILEY: Yes; it is in Section 40. You have it right there; it is pretty nearly the same.

Mr. NILES: Yes, it is in effect the same. This language, if I may explain for use on this particular question as well as upon other questions that may arise — I understand that this is really instruction to the Committee on Legislation and the Executive Committee, and I should not suppose that the Committee on Legislation or the Executive Committee would be restricted to any exact phraseology in the

hearings before the Committee on the Judiciary or in finally shaping up the legislation. I ask a vote upon the question, if you please.

The PRESIDENT: I will put the question, then, in this way: Shall the recommendation of the Conference on Uniform Laws as to the service of the notice be substituted for the report of the Committee?

The motion being put to vote, the proposition to substitute was carried without dissent.

Mr. NILES: The second recommendation:

> "*Second.* Your Committee recommends that Part II., Sect. 18, be amended by adding at the end thereof the words, 'at the time it was suffered.'"

I will read Section 18:

> "A notice given under the provisions of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place or cause of the injury, unless it is shown that it was the intention to mislead and the association was in fact misled thereby. Want of notice shall not be a bar to proceedings under this act, if it be shown that the association, subscriber, or agent had knowledge of the injury."

We propose adding "at the time it was suffered."

The PRESIDENT: What action will you take on that suggestion?

Mr. FRIEDMAN: I move that it be accepted. (Motion seconded.)

Mr. GEORGE W. ANDERSON: Mr. President, it seems to me that that goes farther than the committee thought. I was not present when that particular recommendation was adopted. "At the time that it was suffered" means, I suppose, at the moment it was suffered. In the ordinary course of business no employer would know about an accident unless he was present. The accident would be reported

within an hour or a day thereafter, and this would make this provision for a notice the same old pit and catch and trick that the old law was that we are trying to get away from. It seems to me that we should either let the act stand as it is, and it can be reasonably construed to protect the employer, or, if it is to be amended, let it read "within a reasonable time after the injury was suffered."

Mr. BAILEY: I desire to second Mr. Anderson's motion. I think it is dangerous to limit it right down to the exact moment of the accident. The language in the uniform law is the same as in the Massachusetts act and goes upon the theory that the law does not require a useless act. If the employer already knows of the accident it is superfluous to give him a notice — at any rate, to let him out because he did not receive one. So I think the language in the act is safer than what is proposed.

Mr. HOMANS: Mr. President, as I prepared for the Committee on Legislation this amendment which our committee has recommended, I should like to say a word as to why we were led to propose this change. Under the act as it reads to-day, and I was surprised to find that under the act as it was drawn by the Commissioners on Uniform Laws, any evidence that the association or employer had received notice of an injury would be sufficient to do away with the formal notice required by the act. For instance, if in the trial of a case a witness comes forward who testifies, "I telephoned two hours after the accident to the employer about this accident," you have then sufficient evidence to comply with the language of the statute: "If the association, subscriber, or agent had knowledge of the injury." That would be satisfied by testimony from anybody who happened to turn up at the trial that a telephone message had been sent. I think that gives great opportunity for fraud and perjury, if notice of the injury is of any importance in the matter at all. I think that as long as you have elaborate provisions for giving notice to the employer or to the association of the happening of an accident, there should not be the possibility of substituting for that formal notice some informal telephone communication or word of mouth, some

piece of evidence which in the hands of an unscrupulous man may be procured. And for that reason I felt that some safeguard should be put around that clause. Mr. Niles calls my attention to the fact that the requirement would be satisfied by some evidence that any agent of the employer had been telephoned to.

Mr. JAMES A. LOWELL: The question under this act is not quite the same thing that we are familiar with in the question of notice in a trial at law. The great point under this law is to make sure that every honest injury — every man who receives a real injury and is not making up a case — shall have a remedy. Now you want to have your law so broad — and you may call it slipshod if you want to — so wide as not to shut out anybody who has a real injury. Now if you put in any such phraseology as is submitted by this committee, you at once will inevitably cut out people who should come in. What you want to cut out is not the man who really has an injury and forgets to give notice; you want to cut out the man who has not got an injury and is faking one. Under the words as they stand in the statute now there is no danger of the fake injury getting by, because you can always bring up the question and try it out whether there was that injury or not, and the mere fact of a telephone communication being the only thing he did is strong evidence that it is a fake. But if you put in any such law as this you may very likely take away the chance of a man who has really received an honest injury and has forgotten — did not know enough to give a notice, or something of that kind. Any provisions you put into a law about this are almost sure to act against the employee. That is something you want to prevent in the notice of injury. The employer is not going to be prejudiced merely because an honest employee has forgotten to give a notice, and under the act as it stands without the amendment which is proposed he would not be likely to be imposed upon by a man who is feigning an accident or an injury which had never happened.

Mr. FRIEDMAN: The idea, as I had it in mind, of the committee's amendment was that if you did not put in the

time when the notice was to be given, this telephonic message or any other message, that the claim might be made six months after the injury for the first time. In a large manufacturing establishment somebody comes around five months after the accident and says, "I was hurt." That is a notice; it is a sufficient notice even if given orally in that way. But the idea was that you would get a notice within a reasonable time and added to another amendment that was for the purpose of helping the employer to have a medical examination or give medical assistance to the injured. We do not object to any notice that is given that is legal under the present statute. It is not to make the giving of the notice any more difficult. It is simply to bring about a certain degree of protection against fake claims by saying, "You don't have to give any notice at all provided your injury was brought to the attention of the employer substantially at the time it occurred." That is apt to be the fact in every genuine injury, while in a case of a fake injury of course the employer will not have any notice at the time of the alleged fake. To meet Mr. Anderson's objection, I personally would not oppose amending the committee's recommendation by adding "substantially at the time it was" —

Mr. NILES: "At or about the time it was" —

Mr. FRIEDMAN: "At or about the time it was suffered," or something of that kind.

Mr. FRANK F. DRESSER (Worcester): There is one point in the statute as it stands that I think is important. It says: "If it is shown that the association, subscriber or agent had knowledge." When we think of accidents in all these amendments we think of accidents as being serious things, striking things, a man being maimed or badly hurt. The great majority of accidents that we shall have to deal with when this statute goes into effect will be the slight accident that has perhaps been magnified. Now here are a lot of people who have been lifting things; they are getting strained backs; such accidents are not reported to any insurance company by any employer now, but we shall hear of strained backs and blistered hands, and so forth, after this

act goes into effect. I happen to know of a good many injuries of just that sort which are carefully reported. Now I have found that sometimes when some of these men wish relief who are hurt in that form, we say, "Did you get hurt in the mill?" They say, "Yes, I got hurt in the mill." Well, we can't tell whether a strained back happens in the mill or somewhere else. Sometimes they are able to get hold of one of their fellow workmen who says, "Yes, I was about here when he got hurt." Now, "agent" will cover that workman and it seems to me that the word "agent" should be left out or should be defined. That is, the knowledge which the subscriber or the association must have should not be the knowledge of some fellow workman who might be around at the time of the injury but who had no duty in the premises. I don't know what a court would say; perhaps they might say that "agent" as used here must be a person charged with some duty of reporting. But that is a question, and it seemed to me that this question ought to be guarded against in some way, because it opens the door fairly wide to uncertainties.

Mr. WARREN: I think if the two sections are read together here the Association will see the need of some amendment.

Section 15 provides that

> "No proceedings for compensation for an injury under this act shall be maintained unless a notice of the injury shall have been given to the association or subscriber as soon as practical after the happening thereof. . . ."

Then you come down to Section 18 and you find that that provision of Section 15 is entirely nullified by this statement:

> "Want of notice shall not be a bar to proceedings under this act, if it be shown that the association, subscriber, or agent had knowledge of the injury."

Now it would seem that taking the effect of those two sections together it was entirely open for a person to be

injured and so far from giving any notice within as short a time as practical he might wait for six months or until immediately before the expiration of six months and then convey some notice to the employer, and that notice would be knowledge of the injury, I suppose. That is, as the two sections stand now it seems to me that it is entirely open for any person injured to wait the full six months before giving notice, so that the provision in Section 15 requiring him to give notice "as soon as practicable" is entirely nullified by saying that the want of notice shall not be a bar if the employer had knowledge. The employer will have knowledge as soon as the man gives notice, and the man can wait and give notice any time he sees fit. It would seem, therefore, that some amendment was necessary.

Mr. HOMANS: Mr. President, Mr. Warren has stated very clearly the position of the committee. It seemed to us absurd to have elaborate provisions in regard to a written notice and then nullify them by providing that they should not be enforced provided the employer had knowledge himself. Of course the employer gets knowledge himself by any form of communication, whether written, oral, telephonic or otherwise. I think that what Mr. Lowell says really goes to the extent of saying that there is no need of notice at all. Well, that is all right; if the act provided that there need not be any notice at all, that is a position that I can understand. But when the act says that a notice shall be necessary and then says that a notice shall be unnecessary if the employer has knowledge at any time, I think you have a perfectly absurd situation, and that is what led the committee to make the recommendation.

Mr. CLARENCE A. BUNKER: Mr. President, didn't Mr. Homans put in three words that are not in the bill when he said that the act says that a notice "shall be unnecessary if the employer has knowledge at any time"? There is no "at any time" in the bill. It says that want of notice shall not be a bar if the person "had knowledge of the injury." Doesn't it mean, had knowledge at the time that the notice should have been given? Therefore, is not that all covered by the provision in Section 15 that notice should be given

"as soon as practicable" after the happening of the event, unless at the time the accident happened the employer had knowledge? It seems to me that you don't need any amendment.

Mr. HOMANS: Mr. President, I think the last speaker read a great deal more into the act than I did. I am perfectly willing for the committee to accept Mr. Dresser's suggestion. I entirely sympathize with that.

Mr. NILES: What is that?

Mr. HOMANS: That the words "or agent" be stricken out from the section entirely, in the last line of Section 18.

The chair put the question on the motion of Mr. Dresser to strike out the words "or agent" in the last line of Section 18, and the motion was rejected.

The PRESIDENT: We then come to the words "at the time it was suffered," and in regard to that there have been several suggestions but no specific motion that I recall as to the modification of those words. If I am in error, correct me.

Mr. FRIEDMAN: I move, then, that it be modified so as to read "at or about the time it was suffered."

Mr. NILES: I am content with that amendment.

Mr. ANDERSON: Mr. President, I think Mr. Lowell's statement is conclusive. I prefer no amendment at all. I adopt his argument.

The PRESIDENT: Shall the word "about" between "at" and "the" in the recommendation of the committee be adopted? (Putting the question.) It is not inserted.

It was then moved that at the end of Section 18 these words be added: "within the time prescribed by Section 15 for the giving of said notice."

Mr. NILES: I am content with that.

The amendment was adopted.

The PRESIDENT: Now, does that dispose —

Mr. NILES: That disposes of that recommendation, does it not?

The PRESIDENT: No, that is not disposed of. Now we come to the principal question.

Mr. NILES: Oh, you have simply amended it.

The PRESIDENT: Shall the words "at the time it was suffered" be inserted in the act? (Putting the question.) The words will not be inserted.

Mr. WILLIAM R. BUCKMINSTER: I have one suggestion to make in Section 18 as amended. By the report of the committee as it has been amended by this meeting, the word "agent" is stricken out of Section 17 entirely. (Voices: "No, it was not.") Except "agent upon whom legal process can be served." Now you have that description of agent in Section 17, and in adopting Section 18 as it stands and using the word "agent," it seems to me that you imply the same sort of agent as is described in Section 17, and therefore you require knowledge to be had by an agent upon whom legal process could be served.

The PRESIDENT: Do you make any motion with reference to that matter?

Mr. BUCKMINSTER: I make no motion, but simply a suggestion.

The PRESIDENT: There being no motion, we will pass to the third suggestion of the committee.

Mr. FRIEDMAN: Every one having copies of this report, I suggest that to save time we take up the section without reading it.

The PRESIDENT: I think that a wise suggestion.

Mr. NILES: It is suggested that as all of you are assumed to have copies of this report, instead of reading it we take up that section without the reading of the report of the committee upon the section. If that is agreed to we come to the amendment proposed to Section 19.

The PRESIDENT: That is, a recommendation that the words "after an employee has given notice of the injury as provided by this act" be stricken out and that Section 19 be redrawn and modified as set forth in the report.

There being no remarks, the question was put and the amendment proposed was adopted.*

The PRESIDENT: The fourth recommendation is in order.

Mr. SOLOMON LEWENBERG: Just a moment. May I suggest this: In the case of a man making no claim whatever for compensation, wouldn't that subject him to an examination for an injury for which he made no claim? To that extent it might work a hardship on a man.

The PRESIDENT: That is a good suggestion, but we have passed that article. What action will you take upon the fourth recommendation of the committee?

Mr. FRIEDMAN: I move that it be accepted.

Mr. BAILEY: I think Mr. Niles ought to tell us what the gist of that is.

Mr. NILES: I could not tell you better than by reading what we have said here:

Fourth. Your committee recommends that the memorandum under Part III., Section 4, the order under Part III., Section 13, if amended as we suggest, and the decisions of the Committees of Arbitration, and of the Industrial Accident Board, where an appeal is taken, be considered

* This recommendation of the committee was as follows:

Third. Part II., Section 19, provides that after an employee has given notice of the injury as provided by this act, etc., he shall, if so requested by the association, submit himself to examination by a physician or surgeon, etc. As this notice may not be given for six months after the injury, and as it is oftentimes of the greatest importance to have an examination as soon as practical after the injury, your committee recommends that the words "After an employee has given notice of the injury as provided by this act" be stricken out.

As it is clear that the liability of the employer under this act, in case of serious or wilful misconduct, may be doubled or greatly increased, it appears to your committee that the employer should have the right at his own expense to cause such examination or examinations at reasonable times to be made. Your committee therefore recommends the amendment of said section so that it shall read as follows:

"Section 19. An employee shall at any reasonable time during the continuance of his disability, if so requested by the association or the subscriber, submit himself to an examination by a physician or surgeon authorized to practise medicine under the laws of the Commonwealth, such physician or surgeon to be furnished and paid by the association, or by the subscriber if the subscriber requests the examination. The employee shall have the right to have a physician provided and paid for by himself present at the examination. If he refuses to submit himself for the examination, or in any way obstructs the same, his right to compensation shall be suspended, and his compensation during the period of suspension may be forfeited."

final and conclusive as to all matters of fact, if the provisions of the act have been complied with; and, when the Court is of the opinion that the provisions of such act have been complied with, the memorandum, orders and decisions of said Committee, or of said Board, shall be enforceable by the Superior Court as a decree of a Court of Equity.

The Supreme Judicial Court in its opinion assumes that the decisions of the Committee on Arbitration, or the Industrial Accident Board, are to be enforced by decrees of the Court. Expensive or long continued litigation in the courts should certainly be avoided, and this can only be done by excluding from the consideration of the Court all matters except such as appertain to the regularity of the proceedings before the Committee or Industrial Accident Board. The determination of this committee and of the Industrial Accident Board upon all questions of fact should be final and conclusive.

That was the purpose of this amendment, to make clear what the Supreme Court has intimated it assumes may be the intention of the Legislature, namely, that when, if necessary, an employee goes to the Superior Court to have enforced a decision of the Arbitration Committee or the Industrial Board, the only question to be submitted to the Court is the question as to whether the proceedings before that committee or that board have been legal and sufficient. No question of fact goes to the Superior Court; otherwise you may litigate before the Superior Court questions that would have arisen and should have been litigated before the committee or before the Industrial Board. The purpose of this suggestion is, and the purpose, I think, of that act is, that no other question shall be submitted to the Superior Court but the question of the regularity and sufficiency of the proceedings before the committee or the Industrial Board.

Mr. ANDERSON: At this point it seems to me that I may, as a member of that committee who doesn't agree with the main conclusions reached, state something which is pertinent to this point but which goes far deeper than the

question of this amendment. I urged my views upon the committee and they did not prevail, and I shall not urge them at length upon this Association. But I am profoundly convinced that this act, so excellent as I hope and think it is in spite of some of the animadversions of Mr. Sherman, will utterly fail in its administrative procedure. I do not believe that the English experience or anything in the German experience grounds a sound hope that you can compel the payment of these sums of money by the act or the edict of a board which has not the power of a court. I do not believe that an industrial board consisting of three members, situated here in Boston, can deal efficiently with the accidents. Accidents are local; administration should be local. Arbitration is a myth. It has been found to be a myth in England. In England practically all the proceedings, — where they are not settled by an agreement (and the memoranda of agreement are required to be filed so that they are proved of record), although they have the myth of arbitration in their statute, — they are all County Court law suits. The percentage of cases that go to what they call a committee, where the County Court is not an arbitrator, is a negligible quantity. It will be found in Massachusetts, in my opinion, that these cases will have to be administered in the municipal courts; you have such a court in every community, where the parties may go without any substantial expense or loss of time and travel, at any rate, to try out the question as to whether the man is well or not, which is the question into controversy that is going to be litigated as often as any single question which will come — whether he ought to go back to work at his old job or at some less well paid job. That will be the question to be settled by local litigation. My own view is — and I want to express it so that I may not hereafter be said to be estopped from expressing it — that we are wasting our time in trying to improve the method of procedure which is set out in this bill. I believe it will fail. I believe we ought to go to the roots of the procedure and provide adequate machinery. This part ought to be carefully framed. I would not have any costs allowed. I would make the courts act

almost *in loco parentis*, very much as our probate courts have acted. The proceeding for lump sum settlements should be carefully guarded, as it is in the County Court practice in England. Their money is handed to the clerk or registrar, and doled out as the probate court has it doled out by guardianship, — or something as our probation officers keep charge of the misdemeanor classes in the criminal courts. Something of that kind has got to be devised, in my opinion, or this act will fail.

While I am on my feet, I will express, as pertinent to this, the other serious objection which I have, which goes to a good many of these amendments, and that is on the question of insurance. I do not at all agree with Mr. Sherman that insurance is not a necessary part of this scheme. I believe it is the very essence of it. I believe if we leave these acts to be administered by the insurance companies and for their profit they will be a failure here as they are a failure in England. I think, as near as I can determine after days and days of study, that in the part of the business administered by private insurance companies in England — and it is a large part though not by any means all, because the large employers like the railroads insure themselves, but there is a large part administered by the private insurance companies — the employer pays $2 for every dollar that reaches the victim. I believe the Germans are administering their system for an expense of about fifteen per cent of the total sum paid.

There are, of course, a great many objections to the insurance companies which you can hear from the labor delegates besides the mere question of expense. But this system which we have got here is impossible of administration through the Industrial Board and will be inordinately expensive not to say inhumane if the insurance feature is left to the liability companies; in that business, naturally and necessarily, for profit.

Mr. Bailey: Mr. President, the amendment which is proposed by the committee is based upon the assumption that the Industrial Accident Board is not a legal tribunal — simply a commission created by the Government. I said

that subject to correction, and Mr. Saunders, who knows all about it, may say that I am wrong, but that is what I understand is the basis of this amendment. It is because this accident tribunal is not a legal tribunal —

Mr. ANDERSON: Judicial, you mean, don't you?

Mr. BAILEY: Judicial; that is what I mean, judicial; is not a judicial tribunal and cannot issue executions and process, and so it is necessary to go to the Court — Superior Court — to enforce its decrees. Now, if that is so, if that assumption is correct, then the amendment proposes that the finding of fact of a commission which has not power to subpœna witnesses and compel attendance of witnesses is to be final. Now I am wondering about a justice of the peace; he may subpœna witnesses, but only to appear before some such body as a court or a master or an auditor, which is a part of the judicial machinery. I doubt if any ordinary justice of the peace could summon any witness to appear before a State Commission. So that it does seem to me that a little more machinery is needed and that the amendment proposed is not quite enough. I had supposed that that local Accident Board was going to be a judicial tribunal in order to amount to anything, that it was almost necessary to constitute them a legal tribunal, and I supposed it was intended that they would be a legal tribunal. The Supreme Court in its opinion to the Legislature tucked in those words: "We do not suppose that is going to be a judicial tribunal," but I am wondering whether you have not got to solve the problem by making them a judicial tribunal rather than what is proposed by the amendment. I think Mr. Saunders could tell us all about it.

Mr. DRURY: This is the fourth of a series of thirteen recommendations by the committee. Two gentlemen have spoken on it; other gentlemen may speak upon it. The hour is growing late. There are a number of gentlemen here who undoubtedly desire to speak upon the general question, the subject of the address of the speaker of the day. There are a number of us here who desire to learn all we can about the general subject while we are here. I would move, in view of the lateness of the hour, that the

discussion of the specific recommendations be suspended and that the general question be taken up.

The motion was seconded and carried.

The PRESIDENT: The general discussion of these special recommendations is suspended and the general question is open.

Mr. BAILEY: I would like to say just one word, gentlemen. I don't want to talk very much, but Mr. Sherman spoke about the comparative merits of the compulsory system as compared with the elective system. I sent you within a few weeks a copy of the last edition of the proposed Uniform Workmen's Compensation Act. If you got as far as half way down the first page you saw that it was drawn on the elective theory, but by striking out Part II., containing four or five sections, it would become a compulsory act. I may say that the committee of which I am a member is working upon that and is divided at present as to the comparative merits of the compulsory theory as compared with the elective. I myself agree with Mr. Sherman that the compulsory act is the only one that is going to amount to very much, and I have one member strongly with me and one or two others that are coming, and I hope before the end of the year to have the majority of the committee favoring a compulsory act. I say that because I want your minds to work in the same direction. The Federal Commission which is going to report the first of January to Congress has prepared a compulsory act which is going to apply to all the railroads of the country engaged in interstate commerce, which means the bulk of the railroads of the country. They have reached that conclusion after the most careful consideration and argument as to the comparative methods of the compulsory system and the elective system. I just want to impress that upon you, that that question is one of the vital questions, and that just because you find that the uniform act is now drawn upon an elective basis I don't want you to think that that is final.

Mr. LOWELL: Mr. President, this matter to-day before

us is a practical matter. While I agree entirely that a compulsory law is far better than an elective law, we have not got it in Massachusetts and we cannot have it, certainly at this session. And however interesting any such remarks or discussion might be — and I am not saying that they are not interesting, because they are, and I shall agree probably with all remarks that are made in favor of a compulsory system — the practical way to treat this situation is just exactly the way which your committee has treated it, namely, to take the act as it is, and say, " It is not the best, probably, that could be conceived; if we were legislating in Utopia we would legislate some other way and we might think that the Arbitration Committee is all wrong and it ought to go to the Court," and so on; but you have got here a scheme which is a fairly consistent whole and all parts of it cling together. Perhaps your Arbitration Committee won't work, but it is an idea; the whole idea of this new law is that you shall have a body, an industrial accident board, which shall carry out its provisions. That is an entirely new thing in a law of this kind. In order to have this law work well that industrial accident board must be composed of men of high standing, of character and of ability, and they must have the working out of the law, and it will not do, in my judgment, to provide that the legal questions shall be taken entirely away from them and determined by a police court and then by the Superior Court with their having nothing to say about it, because that in the first five years will be the most important part of the whole act, namely, determining what it means, and the Industrial Accident Board has got to have its finger on the pulse of the law that is being formed by them, so that you have got to get some kind of a system like this arbitration system which they will practically be in control of. So that, as I say, your committee has taken what I think is the most practical and highly sensible attitude. I will say that I have read these recommendations all over, that another member of the commission and I this morning went over them together very carefully and that we agreed practically with almost everything there and had already drafted amend-

ments covering almost all the points. But my point is this: I hope that this Association will now not vote on whether state insurance is better than mutual insurance, or whether private insurance is better than mutual insurance, or whether no insurance at all is better than having insurance tacked on to it — that it will not run away and vote on the question of whether compulsory insurance is better than elective insurance, because those things are up in the air — they have nothing to do with the present practical thing before this Association, and this Association, if it is going to amount to anything, must be a practical body, and what you should do is to back up your committee with such changes as you want to make in their very able report, suggesting things which in their opinion will make this present law, taking its general principles as settled — make this present law work well. The point is, we have got a law on the statute books, and in order to make that law work well we want to go in and change the features of procedure of it, make it more easy to act under that law. Now, if you gentlemen do that and go up to the Legislature and say, " While perhaps we do not agree with this law in the whole, we think it is fairly well done, well enough done anyway to give it a fair trial; now we want you to make this amendment and that amendment and the other amendment so as to make it work better," — if you do that you will be accomplishing some practical purpose. If you go up in the air and talk about state insurance and mutual insurance and compulsory and elective, you won't get anywhere.

Mr. FRIEDMAN: I wanted to supplement what Mr. Lowell said by the actual experience in the Committee on Legislation. We had a pretty fair attendance; we came to this subject without any prejudice and a great many of us without as much experience as we afterwards acquired with the act. We began to discuss the great economic and sociological principles that were involved in this kind of legislation. We found we represented every stripe of opinion and could not make any progress to formulate any one statement that represented the opinion of the eight or ten or

a dozen men who were there together, trying to deal with this problem. Then we began on another track, which was to make the best of what we really had in this state, to see if we could not make it workable and justify the experiment by such experience as we could get under the legislation as it was then enacted. We thought our experience as lawyers would give us a chance of picking out some awkward places and getting the frame of the act smoothed out, make it workable and make it easier to get people accustomed to a workmen's compensation act. After we have had actual working experience under this act we will be ready to take the next stage, which is to make radical changes and carry out such theories as experience demonstrated are practical. That is the explanation of the report which we submitted, and that is why I want to suggest that Mr. Lowell has presented to the Association in the words which he said the work that is practical for us to do. We won't get anywhere if we sit down here to discuss theories, because we will have hopeless differences. I don't believe those who believe in state insurance will ever be convinced that something else is better, no matter how much discussion you have.

Mr. ANDERSON: Mr. President, a word more. It seems to me the absolutely conclusive answer to this argument is this: If we once start in under this act, which takes effect July 1 next, and the liability insurance companies now doing business in the Commonwealth, organized as they are organizing, I suppose, to take care of this business, get their capital invested and all their employees out to take care of it, you never can shake them off. If the compensation business once goes into the hands of the liability companies in this Commonwealth, you won't get rid of them for twenty years, if it costs you $3 for every dollar that the victims get. Now or never is the time — I won't say never; now, or not anywhere in our lifetime, is the time to deal with the question as to whether we are going to have this compensation business done economically or wastefully. Get them once in possession of the field, get their lobbies once through the corridors of this State House, and

you can't get them out. So also as to your Industrial Commission; if it will work — and I wish I could believe it would work — I should be glad to see it tried. It is not perhaps as dangerous as getting in your liability companies with all the capitalistic interests which are involved there. It is natural — I am not attacking or criticising them; they are going after business and if they get it they are going to hold on to it; any of us would under the same circumstances. But we are dealing with a great problem of social welfare, not trying to make a new field of insurance activity except as that insurance activity makes for industrial and social welfare. And so as to procedure. The Governor appoints a commission of three high-minded men and they go to work. They have got to organize a machine. The thing will either work or it won't work. I think the sounder opinion is that it won't work. I think some of the judges have expressed an opinion to that effect. Here we have got an organization throughout the Commonwealth of municipal courts, with court houses and clerks and machinery, which costs us already a great deal of money. Many of these judges are good judges; some of them may not be good judges. It is utterly foolish to duplicate machinery, to create another system of tribunals to deal with judicial questions, if we can simply add this function right on to the functions of existing courts. The English experience — we are very much like the English — is that when people cannot agree on a settlement they want to fight; they want to get before a court that has got the compelling power of bringing in witnesses and the compelling power of enforcing its judgment, and the fights have got to be fought out as lawsuits. Ninety odd per cent of these cases will be settled and there will be nothing but a memorandum of agreement, as to which you need a little oversight — guardianship, you may say — in behalf of the public interests, to see that frauds are not perpetrated upon a comparatively helpless class. That will take care of ninety odd per cent. Then there will be your fraud cases and there will be your doubtful cases while we are getting educated as to the merits of this new scheme. There will be those serious cases

where the question is whether the employee has recovered in whole or in part or should seek a new job; cases like those in England where a skilled workman, an engineer, is injured and he is forever put out of his old job. In one case they said he was able to tend urinals. He didn't want to tend urinals. The question was whether he ought to tend urinals or not. That is a class of questions which has got to be fought out. Then you have got to go into your Superior Court to enforce the order. We have thus a kind of machinery which is not going to save litigation. This act as it is now drawn will be, I am afraid, very much like what Premier Asquith said about the old English Employers' Liability Bill of 1880, which was brought over here in 1887: "A mass of pitfalls and traps which had produced an amount of litigation which in proportion to results achieved was entitled to no respect whatsoever." We are going to take away the employer's common law defences. A man is hurt and goes to your Industrial Accident Board; the Industrial Board says, "All right," and he gets something that the employee thinks is an order that he shall receive half wages. The employer says, "Collect them if you can." Then you start a lawsuit in the Superior Court to enforce the order. I don't know whether you have got to start on the law or the equity side. It may be you have got to start on the equity side. You go through that Court and on up to the Supreme Court. When is a man going to get his compensation under a scheme of that kind? Just start with the first accident case that is really fought and carry it through in your mind under that machinery and see where you come out. I should be glad to sit down and keep still; I have made this speech so many times I am ashamed of it, to so many different people; but I do believe that my position is the right one.

I may say one other thing as justifying my speech-making. I went to Europe a year ago last summer and studied this question. I put in three months of the hardest work I ever put in in my life in the study of this problem, and that is the excuse I have for undertaking to harangue my fellow practitioners. Since that three months were up I have

not ceased to study and to worry about it; I have reached a point where I don't *know* much about it, but I know that some things won't work. If anybody asked me to frame up a perfect measure I would decline to undertake it. But I am convinced of two things: This kind of act has got to be administered by courts; and you have got to provide an insurance scheme which is practically state insurance. I have a little more faith in this mutual insurance scheme than I have in some of the other parts, and it may be that it can be worked out; I think there ought also to be a provision for contracting out into a mutual scheme — like the English scheme which says that there shall be no contracting out of the act except into a scheme which shall be approved by the Registrar of Friendly Societies, who has a certain oversight of these matters and who might be *pro hac vice* our Insurance Commissioner — a scheme which gives as much benefit to the employee as the law does. The Gas and Coke Company of London and the Great Eastern Railway of England, which has had an agreement of its own for thirty years, have kept right on with their own schemes. The employee is better off, the employer is not troubled by any limitations of the law and there is practically no litigation. The Great Eastern Railway has had but three suits in thirty years; those were practically blackmailing suits, and the company won them all. If we do not deal with all those questions of procedure before the machinery and insurance under this act is put under operation, we have got five years of pretty nearly hopeless struggle to get out of the morasses into which we shall be plunged.

I apologize for taking so much time.

Mr. NILES: There is one sentence in our report which I desire to call to your attention, and with that I am content to leave this subject with the simple explanation that our committee listened to Brother Anderson with profound interest, and we listened to many other gentlemen whom we asked to come before us, including Brother Bailey — gentlemen who had studied the subject. We spent not hours but days — more than one whole day, and I think more than two whole days — in the consideration of this

subject. We started, as has been said by Brother Friedman, to consider the whole subject, and after we had spent a day upon it we came to the conclusion that unless a man had spent three months upon it, as Brother Anderson has done, — and he says that he would not now be willing to frame a statute, — or weeks and weeks on it, as Brother Bailey has done, it would be absurd and foolish if not wicked for us to undertake as a committee to advise the Bar Association to take any action upon these main questions that my Brother Anderson has so well discussed. But they are too deep, they need too much study, too much consideration for us as a committee, though we had days' time to give it where you have only an hour. I don't know what time you gentlemen have spent studying this question, but I know that not one member of our committee, except perhaps Mr. Anderson, was willing to say that his mind had settled down on any definite conviction as to what ought to be done except upon a couple of questions.

Now, I say I will read, if you please, as the result of these conferences that we have held, one sentence in our report:

> "Under these circumstances your committee is not disposed at this time to recommend any radical change in the general principles of the Massachusetts act. Some changes, however, seem imperatively necessary to render its operation practical, workable, and effective, and rather than to propose at this time any radical change in the plan and general scope of the act, your committee recommends that this Association coöperate with the Legislature in an impartial endeavor to perfect the act as far as possible, leaving greater changes, if they should appear to be necessary, to be made when the application and effect of the act shall disclose more clearly just what changes therein are desirable."

Now, gentlemen, my Brother Anderson may contend that he would transfer this whole business from the Arbitration

Committee or from the Industrial Accident Board to the courts — to the municipal courts. We discussed that at great length and we found ourselves engulfed in a sea that none of us could fathom as to where it would bring up. And I tell you, gentlemen, as the result of our inquiry and our study of this question, that we were of the opinion that if we go up to the Legislature to propose radical changes — as, for instance, transferring the consideration of this matter to the courts, especially the municipal and police courts — and advocating and urging compulsory insurance, that we shall absolutely fail to accomplish anything. I agree with Brother Lowell that we shall have failed to accomplish anything; we shall beat the air to no purpose.

Now, gentlemen, can you not see your way clear to agree with us that while the Legislature has spent weeks and weeks in the consideration of this matter and has passed this act which stands on our statute books to-day — can you not agree with us that our policy, the sound policy for this Bar Association, is to approach this question without bias, without prejudice, without partisanship, and endeavor to coöperate with the Legislature in perfecting the law that we have, rather than in turning the whole thing upside down and undertaking to begin back where the Legislature of last year began? That, I think, is practical. The proposition of my Brother Anderson is that the scheme is wrong, that we have got to begin practically over, we have got to adopt an entirely different plan; and that your committee was not in favor of doing at this time. Later on it may be desirable, but not at present.

Mr. ANDERSON: In order to make concrete the views which I should like to see this Association adopt and instruct its committee to exercise its best endeavors to carry into effect, I submit the following:

> "That it is the sense of this Association that the Workmen's Compensation Act should be amended in substance as follows:
>
> "First: That Part V., Section 3, be repealed."

That section is what is sometimes referred to as the "joker"

in this act — put in by an amendment in the Legislature contrary to the recommendations of the commission and opening the door to have this business turned over into the hands of the liability companies.

> "Second: That the act be so amended as to put the enforcement of the act within the jurisdiction of the existing courts."

I have made it broader than the municipal courts, so that if it be thought that it should go in whole or in part primarily or secondarily to the Superior Court, the committee might so report.

> "Third: That compulsory state insurance should be substituted for the insurance method provided in the act."

Those are, I take it, three propositions and can be divided, but it will make concrete the views which I hold. I would like to say in response to Mr. Niles' suggestion that my views are revolutionary, that they are evolutionary — they are not revolutionary.

Mr. NILES: I didn't say they were revolutionary.

Mr. ANDERSON: It leaves the substance of the act absolutely untouched. It strikes out that provision which the Commission wanted not in with relation to the private liability companies. It puts the administration of the act out of the hands of the Industrial Accident Board into the hands of the existing courts under such provisions as might be worked out. It substitutes state insurance for the mutual scheme; we have some precedents for this.

I think the questions should be divided. I take it anybody has a right to ask it as a matter of parliamentary law, and I framed them so that they can be so divided.

Mr. JAMES B. CARROLL: Mr. President, we have been all over this matter. I am very sorry to disagree with Brother Anderson, because I know how much work he has put into this subject and I know how thoroughly alive he is to the necessity of workmen's compensation. But

he seems to me so fundamentally wrong, at least in one of his assertions, that I feel it my duty to say a word. We must remember that we are not dealing with a purely legal question; we are dealing with a practical economic question which concerns humanity and business alike. And however interested we may be in the legal side of this question we must realize that the great body of working men do not want the delay and the formality and the technicalities of our law courts and they won't stand for it. And — unjustly, I think, but nevertheless the argument will be made — it will be made before the Legislature that the lawyers have gotten in their work and it is a scheme to keep us busy that we have insisted that this Workmen's Compensation Act be construed by our courts and not by an Industrial Accident Board. The argument is unjust, but it will be used.

Now, Mr. President, some of us are plaintiffs' men and some of us are defendants' men, but we all believe that this is a good thing, that this Workmen's Compensation Act is an excellent idea. In my humble opinion, if you put it into the courts it will be surrounded and invested with the sacredness of precedent by which you will never get any change. We all know that the Employers' Liability Act was passed away back in 1887, but it remained unchanged for years upon our statute books. The doctrine of the fellow servant, assumption of the risk and due care of the plaintiff have remained unchanged for years, and once you put this act into our courts it will remain unchanged for years. But if you have behind it an active, industrious, energetic Industrial Accident Board who will be alive to the necessity of correcting the errors in the act and making it in fact progressive legislation as well as preventive legislation, in my opinion this act will be greatly improved. We all admit it is uncertain, it is unknown just how it is going to work out. We are all liable to be mistaken. But we must remember another thing, that only a very small proportion of the suits that come into a lawyer's office are brought. In the great majority of cases it is fellow servant or assumption of risk or want of due care on the part of the

plaintiff that prevents an action being brought. To-day our courts are crowded and you are going to foist upon our courts all of this litigation. There is not going to be any dispute between master and servant when a man loses a leg or arm, but the trouble is coming when he is incapacitated and the question to be mooted and tried is how long he is in reality incapacitated; and that is a question of fact, and it is a question of fact which is to be tried not by a jury but by a tribunal of one man. And I honestly believe, Mr. President, that you are taking the first step towards an elective judiciary when you put this matter — this matter of the workmen's compensation — into the tribunals of our courts where questions of fact are to be decided exclusively by judges without a jury.

Another thing. This is preventive legislation. The great benefit, in my opinion, that is to come from this act is this: the enforcement of rules for safety appliances that are going to prevent accidents and injuries to employees. Under your Massachusetts act — and it is a fact which my friend at the head of the Uniform Legislation Committee would do well to take notice of — the directors of the state insurance company have the right to adopt rules with reference to safety appliances, and the Industrial Accident Board have the right to see that those rules as to safety appliances are carried into effect.

Now, then, are you going to send our courts through the Commonwealth into the mills and factories enforcing rules as to safety appliances? Some tribunal must enforce them. If you have an industrial tribunal of laymen, men who are alive to the necessities of this act, invested with full authority as they are under the act, in my opinion you are going to accomplish great things not only for humanity but for industry. You are going to prevent a great many accidents by the adoption, the insistence on the adoption of many easily-obtainable safety appliances.

I am very sorry to differ with my friend Mr. Bailey and my friend Mr. Anderson about this matter, because I know their heart is in this thing and I know they are sincerely honest; but I am just as sincerely opposed to the placing of

this matter in the courts as I am a believer in the fact that ultimately the salvation of this act is to come through state insurance. And yet I do not believe in making any change about that. I believe that to take this act as it is and put it into our district courts, one judge up in Berkshire deciding one way, another judge down in Bristol deciding another way, will lead to endless confusion. What the workingmen of this Commonwealth want is uniform legislation and uniform decisions upon this matter so far as uniform decisions are possible; and you never can obtain, in my opinion, uniformity in the construction and interpretation of this act unless you have one tribunal vested with authority throughout the entire Commonwealth, where the man in Berkshire and the man in Bristol will fare exactly the same. And as an earnest opponent to an elective judiciary, I beg of you, my brethren of the Bar, not to be alarmists, but to have great care what you advocate and move for in the adoption and advocacy of this workmen's compensation. You are, in my humble opinion, taking the first step towards an elective judiciary when you place the construction and the interpretation of this Workmen's Compensation Act entirely in the hands of our courts. You are arraying one class against another. You are calling upon our courts to decide upon questions of fact. You are calling upon our courts to take from men their vested right, as they think, the right of a trial by jury. Therefore I ask you to go slow before you oppose these suggestions of such men as the Nestor of the Essex County Bar and my friend Lowell, who have gone thoroughly into this matter and investigated it from centre to circumference.

The PRESIDENT: Is Mr. Anderson's motion seconded?

Mr. BAILEY: I will second the motion. I think we want to vote on that third clause. It seems to me — I have forgotten whether that is the first or second.

Mr. J. E. MCCONNELL: Will you read Mr. Anderson's motion?

The Secretary read Mr. Anderson's motion.

Mr. J. E. McConnell: It does not seem to me that the motion should be put at this time. It does not seem to me that Mr. Anderson would wish it. It seems to me we should adjourn to some other time; and furthermore, I do not think this body wants to negative this motion without a discussion of the subject. It seems to me that we want further knowledge on this matter and perhaps we want to express our opinion. As somebody has said, this Association is nothing unless it is practical, and if a vote is to come out from this Association embodying its sentiment on some of the most important things involved in this act, it should go out after mature deliberation and not after the few speedy moments we have had to talk this matter over. I want to simply call attention to one thing, and that is this: It is evident that there is a desire here on the part of some to express their opinion and have this Association express its opinion upon some of the principles involved in this legislation. There is a desire on the part of others that this body should take no part whatever in any expression of opinion regarding the fundamental principles of this matter. Now, it seems to me that it is liable to be said that this law — which is going upon our books, I believe, no matter what we do, in some form or shape — is going to become law in spite of the lawyers rather than through their aid. And recalling also the fact that in this report it states that legislation is still in a chaotic state on this question, it seems to me that if one of the most important reforms that has ever been adopted in humanitarian legislation is going on our books this coming year and is going on in a chaotic state, it may well be said that, if anybody can throw light upon it, certainly an association composed of the lawyers of Massachusetts should be able to give some aid to take it out of its chaotic state. Now, that argument is also reënforced by the fact that when the Employers' Liability Act was passed in 1887 it was several years afterwards that the state learned for the first time through our courts that the first section of that act was nothing but an expression of the common law, and that the laborer and wage-earner had been given a gold brick instead of some substantial aid. Now,

if this is in a chaotic state, as the committee expresses it, and if this law is going on our statute books this coming year to take effect, it seems to me that it is the duty of this Association to at least try and do something to take it out of its chaotic state and throw some light upon the question. The questions that Mr. Anderson proposed are material; they go to the very life of the thing. I don't know whether it is wise for this body, even after mature deliberation, to express any opinion upon them, but I simply do not think that this hurried expression should be made either in the affirmative or negative so that this Association shall go on record without having given at least some time and thought to this matter. I move, Mr. President, that this matter be postponed for discussion until some day to be set by the Committee on Legislation, at which all are invited to be present.

Mr. LEWENBERG: I would like to amend that motion so as to exclude the postponement of these various other things proposed by the committee, so far as the form of the act itself is concerned. I think that it is peculiarly within our province here to-day to perfect if we can the sections so far as their wording is concerned. I would therefore amend that so that the motion shall only refer to the postponement of the subject-matter proposed by my learned Brother Anderson, namely, the question as to changing from the Board of Arbitration to the courts and also on the specific subject of insurance.

Mr. MCCONNELL: Mr. President, I should like the whole matter to go over. I remained silent when Section 19 was passed as amended because I did not care to take up the time, although I am very much opposed to it, because the reason of amending Section 19, putting in the provision that the subscriber may request an examination, seems to be in conformity with the amendment giving liability insurance companies an opportunity to do business under the act. If that amendment was not added to the act, I do not think that the amendment here would be necessary. So that to some extent some of these amendments are based upon the discussion of some of the principles like that

insurance amendment, whether the liability insurance companies would have an opportunity to do business under the act. I would like to see the whole thing go over to some future meeting when we can discuss the whole question and determine whether or not we want to send forth any declaration on this act.

Mr. ANDERSON: I would like to inquire for information just what Mr. McConnell's motion is. As I understand it, the Association has no other meeting for a year unless a special one is called. I was not quite certain whether he wanted this referred back to the Legislative Committee with instructions to give a hearing to the Association, or ask them in, or what it was.

Mr. MCCONNELL: My purpose was, inasmuch as the President was about to put your motion and I anticipated a vote, an immediate vote putting this Association on record, to postpone the discussion of this matter until some special meeting could be called at the advice of the Legislative Committee.

Mr. ANDERSON: Would it be satisfactory, Mr. President, to have it in this form: That the motion be referred to the Legislative Committee with instructions to consider and make report at as early a date as practical to the Association or to the Executive Committee?

Mr. MCCONNELL: My purpose in making this motion was not to refer this back to the Legislative Committee but simply to have the Legislative Committee call a special meeting of the Association, making any report they might see fit to the Association, but when the Association, instead of discussing these questions now in a few minutes, would have full opportunity to go into the question as to whether they wanted to go on record or express any declaration of their principles.

Mr. FRIEDMAN: Mr. President, I wonder whether Mr. McConnell realizes how long and how much of a task he is putting up to the Association if they are going to make a full study and form a deliberate opinion? I understand that the Commission that considered this studied it for almost two years before they made a report. The literature on the

subject is very voluminous; there are fundamental economic and political questions to consider, and I do not believe that this Association can solve all those questions and reach any unanimous result. I do not believe that they will get any further by putting it off for a month or less than a month, because to be effective this year the Association would have to go on record and introduce whatever bill they wanted to introduce before the middle or end of January. It seems to me it would be better that the motion of Mr. Anderson be placed on the table and that some motion be made regarding the specific recommendations of the Committee on Legislation.

Mr. McConnell: May I withdraw my motion and move that this meeting now adjourn until four weeks from to-day?

Mr. Lowell: I merely call attention of the meeting that that will be too late to get new business into the Legislature this year.

Mr. McConnell: What would be a proper time?

Mr. Lowell: The first two weeks of January, I understand the rule is now; the first two weeks in the session.

Mr. McConnell: At the suggestion of some of the members from the western part of the state, I will change that motion to make the date two weeks from Friday. I move that this meeting now adjourn until two weeks from next Friday, whatever that date is. (January 12, 1912.)

The motion was seconded.

The President: You hear the motion, which has been seconded.

Mr. Drury: If the motion has not been seconded, I do not desire to second.

The President: I thought it had been seconded.

Mr. Drury: I am not certain whether I have a right to debate a motion to adjourn or not.

The President: A motion to adjourn to a specific date I understand is debatable.

Mr. Drury: I desire to speak in opposition to the

motion to adjourn, for this reason: The Association has gathered together in considerable numbers. Those who have remained throughout the discussion have heard considerable discussion. It cannot be foretold how many may be able to be present at an adjourned meeting. The question for this meeting to consider is, how this Association can best help the Legislature toward the solution of the questions arising. This is an association of lawyers. Others will present to the Legislature, no doubt with great fulness, the economic and political questions which are opened up and have been discussed to-day. The questions of practice which have been considered by the committee will, however, be of great value to the Legislature because coming from a body of lawyers. I therefore hope that the motion to adjourn will not prevail and that after it has been defeated a motion to lay Mr. Anderson's motion on the table will prevail.

Mr. WILLIAM H. BROOKS: Mr. President, I have been a silent spectator here, but my interest has finally been aroused by the suggestion that Mr. Anderson has made and the motion that he has proposed. I must say that I am in a pretty nebulous state myself with reference to these important questions that have been raised here, and I desire an opportunity for contemplation and thought. And it does not seem to me that any action should be taken upon the important features that are suggested here by Mr. Anderson's proposed motion unless we have a further and a larger opportunity for study. Now I don't suppose it makes any difference whether a bill can be introduced into the Legislature two weeks from to-day or three weeks from to-day or four weeks from to-day — some bill can be put in which can be amended at any time during the session of the Legislature. Some bill can be introduced which will be subject to amendment. Personally I am very desirous that there should be a postponement of this discussion. I am uncertain, and I think many of us are in the same state, as to the propriety of the resolution that Mr. Anderson proposes. I think that at this moment I am with him somewhat, but I am "again" him considerably.

Mr. ANDERSON: Mr. President, I don't desire to urge upon this Association any vote on any one of those propositions to-night. If there is any substantial minority, even, in this Association that thinks this matter should lie over before they be called upon to vote for any one of those propositions, in my judgment they have that right; and I therefore hope that Mr. McConnell's motion or any other analogous motion satisfactory to the Association will pass. I am content if those three propositions be brought up for the consideration of this Association and, as I hope, for its subsequent action. I deem them the important propositions underlying this legislation; and I want every member here to have every reasonable opportunity for consideration and for expression.

The PRESIDENT: The motion to adjourn to two weeks from to-morrow is now in order.

Mr. DRURY: May I be heard, Mr. President, for a moment? We are all agreed, I think, that this Association should not place itself upon record without due consideration, at any rate, upon Mr. Anderson's motion. I fear that while Mr. McConnell feels the same way as I do about that, the result of his motion may be to place the Association upon record at some meeting which will perhaps not be so fully attended as this meeting has been. A motion to lay Mr. Anderson's motion upon the table, which can properly be made after the motion to adjourn is defeated, would dispose of the matter, I submit, more satisfactorily.

The PRESIDENT: Well, we will see if it is defeated. (Putting the question.) It is not a vote; it is defeated.

Mr. MCCONNELL: I doubt it.

The PRESIDENT: The vote is doubted. I appoint Mr. Homans to count. All those who are in favor of it, please stand.

The PRESIDENT: The motion is carried. We are now adjourned until two weeks from to-morrow. At 11 o'clock, at this place.

Mr. DRESSER: Would it be possible before breaking up to vote the thanks of this Association to Mr. Sherman for

his address and direct that the Secretary have it printed and distributed to the members?

The PRESIDENT: If no objection is made.

Mr. DRESSER: I make that as a motion.

The motion was carried unanimously, after which, at 5.10 P.M., the meeting adjourned to Friday, January 12, 1912, at 11 A.M.

ADJOURNED MEETING.

The adjourned annual meeting of the Massachusetts Bar Association was held at Room 240, State House, Boston, Friday, January 12, 1912, at 11 A.M., the Vice-President, Charles W. Clifford, Esq., presiding.

The VICE-PRESIDENT: The adjourned meeting of the Massachusetts State Bar Association will please come to order. I ought to say that my occupancy of the chair to-day is due to the absence of the President. By the provisions of the constitution the officers elected one year hold their office until the adjournment of the annual meeting, and this is an adjourned annual meeting. Mr. Hemenway notified me yesterday that owing to an unexpected engagement it would be impossible for him to be present, and that I must take the chair as Vice-President, under my election of last year.

Of course it is not proper at this time, at a business meeting, as he said last year when he took the chair in the afternoon, to make any extended remarks, but I cannot allow the occasion to pass without thanking you, although I am speaking now as Vice-President, for the confidence that you have shown in me and the honor which you have done me in electing me as President for the coming year.

But, gentlemen, before we proceed to business I must say one word — that I recognize deficiencies and disqualifications which perhaps you do not know anything about, and which perhaps, if you had known of them, might have affected your action. In the first place, my hearing is not what it used to be, as the farmer used to say. I find that it is necessary for me to get very near the witness box in the trial of cases, to hear what the witness says. Therefore, if I do not catch the brilliant remarks of some gentleman on

the back seat, at some period of the discussion, attribute it to my want of hearing and not to my want of interest.

The second disqualification which I have arises from the fact that I never have been a member of the Legislature or a member of our own City Council, and therefore I have not that limited knowledge of parliamentary law — even that small amount which the Supreme Court has said was sufficient for those departments. Therefore, if I get you all tangled up by some ingenious putting of some subsidiary motion prior to some other motion, I shall look around to Brother Homans here to straighten me out, and we will try and get some good results.

Finally, the last great disqualification which I have is a fact which I find comes with increasing years, something I think that all of you who have got along to our time of life feel, and that is the loss of the memory of names. I can remember faces, I can tell when a man was born and where he was educated and all that, but the name slips away. Therefore, if in these meetings I should accidentally introduce Colonel Bryan as Colonel Roosevelt I sincerely hope that neither of them will feel insulted or complimented. I shall therefore ask you, making the same request that Mr. Hemenway made when he took the chair last year, in order that there may be a proper record made, that each gentleman on rising shall state his name and residence.

The business before the Association is the consideration, I believe, of Mr. Anderson's motion in regard to the Workingmen's Compensation Bill. The regular business would be the reading of the records of the last meeting. Is there a desire that the records should be read? If not, we will treat that as waived. The chair hears no dissent and the reading of the records will be dispensed with.

The question before the Association is upon the motion offered by Mr. Anderson: That it is the sense of the Association that Chapter 751 of the Acts of 1911 relating to workingmen's compensation for injuries be amended in three particulars; first, by the repeal of Section 3 of Part V.; second, by putting the enforcement of the act within the jurisdiction of existing courts; third, by providing for

compulsory state insurance instead of the insurance plan provided in the act. Is Mr. Anderson present?

I am informed that Mr. Anderson is engaged in the Supreme Court, and the matter is open for discussion or action.

Mr. BAILEY: Mr. President, I do not wish to talk very much, but I was in a certain way responsible for Mr. Anderson's making the motion which he did about striking out Section 3 of Part V., which came into the act as an amendment. It seems to me that that ought to be understood by the Association. I did that against the protest of your Committee on Legislation, because it seemed to me that it was a mistake to have any discussion about this Workingmen's Compensation Act and say nothing on that subject, because it was like talking about the play of Hamlet with Hamlet left out. But Mr. Saunders is here, the father of the act, and he can tell you much more about it than I can. I do not know how free he feels to speak, because the State Commission was divided; they introduced in the report at least three different acts and the Legislature adopted one of them.

Now, that Commission made its report, and it was (I am speaking in a general way) for insurance by this one company, which was to be organized and supervised by the state, the business to be done exclusively by that mutual insurance company — nobody else. That was the way the act was recommended and the way the act was passed in the House. Then it got up to the Senate, and it appeared that the regular companies were going to be put out of business. They naturally got busy, and Section 3 was introduced, which provided that all the regular companies — I speak generally — might participate in the business.

Now, my mind is open, and I am rather inclined to think that the companies should be allowed to do business. But my mind is open on that. Some of the Committee on Legislation thought I was with Mr. Anderson on that motion that that provision should be stricken out. I will say this, that if the act remains as it now is, and that is left in, it is not harmonious; I do not think it is really work-

able. I think some of the committee think it might possibly work as it is; but certainly, if that remains in I believe — Mr. Saunders can tell better than I — that very serious amendments are necessary to make that fit in with the other provisions of the act. When the time comes I am going to ask Mr. Saunders if he thinks there is a fair prospect that a mutual company ever will get sufficient membership so that they will do any business. I believe they are required to get a certain number of subscribers, representing a certain number of workmen, before they can do business. If the regular companies are going to compete I do not know what the outcome is going to be.

I have in my office a letter received from California, from the secretary or chairman of the Commission appointed there, a commission, not to draft an act, but to carry on the California Workmen's Compensation Act — a commission of three members — either three or five. That is an elective act, similar to this, and the letter says that eighty employers out of some seven or eight thousand had elected to come under the act. They represented — I forget the number — perhaps some thousand employees. But he says the insurance companies are advising against their going under it and are insuring them at half rate, that is, they are charging double rate to insure them under the act as compared with taking their chances under the existing law.

So I am wondering in Massachusetts how it will work with the act as it is. I shall be glad to hear from Mr. Saunders how many subscribers they have got — how many they expect to get between now and the first of July. It seemed to me we could not have any discussion about this Massachusetts act without knowing how it grew up, and what it means with that Section 3 in it.

Now, a little bit more history. In the State of Washington a year ago they passed a compulsory state insurance act. As Mr. Sherman pointed out to you, it is not exactly a compensation act, it is more like state insurance; if a workman gets hurt he shall get a certain amount from the state official, and money is gathered in from the employers all over the state to meet that insurance money, and they

have got quite an interesting scheme. But the point of it which I am calling attention to now is this. They succeeded in doing what the Massachusetts Commission suggested should be done, namely, to oust all liability companies from the field of operations so far as employers and employees go. Of course, other things came in, but the business was given exclusively in the State of Washington to this state-regulated and state-managed company.

Now, in Massachusetts, in the act as reported, in the act as passed in the House of Representatives, it was proposed to do something similar, namely, to give the whole business to the mutual company. Mr. Saunders will tell you all about this. I believe the idea was that we found the regular companies charged too much for doing the business, and if you are going to make workmen's compensation a success you want lower rates, and the only way to get them was a mutual company that would not be charging too much; that therefore it was the proper thing for that commission to report a bill which would be framed in that way, not to give existing companies any part of the business, but give it all to the mutual company, and in that way get lower rates.

I am told, further, that the insurance companies, the liability companies, have perfected an organization. When they found what was happening in Massachusetts, and likely to happen elsewhere, they formed a national organization for mutual protection, to oppose any legislation that was going to oust them from the business.

Now, just a word on the merits. Mr. Sherman told you what he had found about the scheme working well, framed on the basis of insurance. Well, the commission I understand feels — your Committee on Legislation feel — that the thing has got started in that way, got a small start, and it had better keep on rather than take up anything else. The special committee on Uniform Workmen's Compensation, which was organized or appointed something over a year ago, has done a good deal of work, had a good many meetings, and has had a good deal of advice. At every meeting we have considered the merits of the insurance proposition

as contrasted with what we call the direct compensation, leaving each employer to insure himself with the regular companies, and at no time has there been one member of the committee of seven that was in favor of the insurance theory. After the act was adopted in the State of Washington, and something similar in the State of Ohio, and I think something similar in the State of Minnesota, though I am not quite sure about that, we felt that we must have a new consideration of the matter, and we spent a half day considering it anew, to see if anybody wanted to change his mind and make the uniform law on a basis something like that of Massachusetts or Ohio. But the Committee said, "No, the objections to that are serious, and we think it would be better not to." So that the uniform law is on the same theory as the proposed Federal law. The Federal Commission has been working on this for a year or two, and they have been hearing about insurance, and state insurance, and all about it, and they have framed their Federal act, which is going to be presented to Congress before long, on the same theory as the uniform law. That, perhaps, is not of great consequence, because they are only legislating for the railroads of the country, and insurance perhaps would not apply there. But that is worth noting, that they have not followed the insurance theory in that way.

I came here ready to be convinced that the Massachusetts plan is the better one, and should be very glad to hear from Mr. Saunders, why it was that the Commission adopted that in preference to the one proposed by Mr. Lowell. Mr. Lowell, you will remember, in his report, recommended something different, something similar in theory to the one recommended by the Committee on Uniform Laws. So that the matter was not unanimous in that committee, and we should be very glad to hear from him on that subject. I suppose the matter has gone perhaps too far to cut the tail of the dog off just behind his ears and have something new, like the uniform law. The uniform law, which has been distributed among you, is still in the process of making. Since it was printed we have made some further

changes which we think improve it, and we should be glad of suggestions from any of you about further changes. It will not be finally adopted or recommended until next summer.

Now, I have been talking against time because Mr. Anderson has not come here, and I suppose he wants to be here and be heard. Judge Hammond said something to me about that not long ago. I said that my associate counsel was coming, and that I could make an opening, I guessed, until he arrived. He said, "Mr. Bailey, I rather you wouldn't get up and talk against time."

Mr. AMOS T. SAUNDERS: I came here to-day, Mr. President, more with the idea of listening and learning than of trying to say anything which would be of assistance to any one else, but it seems as though the remarks of Mr. Bailey have rather put it up to me to appear for the defence.

As I understand the subject of workmen's compensation, it is based upon the theory that certain amounts of industrial accidents are sure to happen in the course of the production of the products of the industry, and that because they are largely, a certain per cent of them at least, unavoidable, they have been known for some time as trade risks, and that they are just as much a legitimate cost of the product which comes out of the factory as the breaking of the machines which are used in the manufacture of the product. The Compensation Act seeks to place the cost of a small portion of these industrial accidents, dealing with them largely by percentages, upon the industry, using the employer simply as a means of distribution, knowing that, as a cost of his product, he can, as a part of the price of that product, place the cost upon the consuming public which uses the product of that factory.

I understand that that is the basic principle back of all of these laws; that is, that the consumer should bear a certain portion of the cost of the industrial accidents which occur, and are bound to occur, in the production of the product which he buys. I know of no other theory than that on which compensation acts can be justified in my own mind. If that is true, then the question comes as to how

to place the cost of these accidents upon the consuming public.

It must necessarily, it seems to me, be placed first upon the industries, using the employers, as I said, as a conduit, and as the most available party, in the first place, to place this accident on, knowing that they can, as a cost of the production, if it is a reasonable compensation act, distribute it among the consuming public.

Now, being a cost of the industry, shall it be placed upon the industry as a whole or shall it be placed upon the individual? We listened to a most excellent address at the previous meeting from Mr. Sherman, in which he said, at the close, that he thought the Massachusetts act had unnecessarily crossed the line between compensation and insurance. In my point of view there is no line — there should be no line — between compensation and insurance. Mr. Sherman's entire discourse was an attempt, and a very successful one, I think, to justify this cost of an industry being placed upon an individual instead of upon the industry. It seems to me the great difficulties which arose in New York, and are arising in some other states at the present time, are founded upon this basic idea: that instead of placing the cost of these accidents upon the industry, some compensation acts, like the New York act, attempt to place the cost upon the individual, and to justify it, not as a cost for the industry, but as an obligation from one individual to the other.

Now, the two foreign countries which have had experience nearest to the line of this effort, to what is proposed by the so-called Uniform Compensation Act, which has not as yet been accepted by any state, and as compared with the Massachusetts act, are England and Germany. The Massachusetts act is not based in any sense upon a novel system, but is an attempt, successful or otherwise (it depends upon the operation, if it does operate), to base an American act upon the German system of industrial insurance. The difference between those two systems, the principal difference, is the very difference between the so-called Uniform Compensation Act and the Massachusetts act.

The English act is a personal liability act, simply an extended liability, the same as the Uniform Compensation Act. It says that in the case of an accident the individual employer shall pay to the individual employee certain specified payments; they may be the same as the insurance payments would be; but the obligation in the English Compensation Act, and all extended liability acts, is an obligation of an individual to another individual, providing no means whereby the employee shall receive the amount that the bill says shall be paid to him by the employer if the employer is successful in escaping his obligation by being cunning or if he is financially unable to pay it, and providing in the bill itself no method whereby the employer can protect himself against this new obligation which is placed upon him as an individual by the new law. That is the English system. It is the uniform compensation system; the direct extended liability system, as I call it.

The German system is not properly termed a compensation system but an insurance system. It says to the employers of Germany, "You shall become members of a certain association." Germany has divided her employers in accordance with the industries, because she has enough of them so that she can. She says to an employer, "You shall become a member of an association. Through this association you shall provide payments, not from individuals, but from the association to the individual employee in case of accident, there being no obligation from the individual employer to his employee on account of the accident, but the obligation being from the association of employers representing the industry to the individual employee, or some member of that association, because he has been injured."

The difference in principle is very great; the difference in operation is very great. A word as to the cost of operation. The English acts have been in operation for about fourteen years. They have all the same insurance companies, the private insurance companies, which we have here. They have their private mutual companies, such as we have, too, here in Massachusetts, to some extent. If I

may go back for a moment, the two things which have led toward the general objection to our present system of negligence I think are, first, the expense of determining where there is liability, and what the liability is. That is the legal end of our present system. And, secondly, equally as great, is the expense of transmitting the money from the employer to the employee through the private insurance concern. The result of our present system here in Massachusetts has been that less than ten per cent of the employees are able to recover, as a percentage of all those who are injured; and, as far as the expense of transmitting is concerned, that over three-fourths of the money which is paid by employers is consumed through the litigation and through the system of insurance in transmitting it to the employees. Those are the two great causes for the general demand for a change in the system.

The English system, in its operation of fourteen years, in the very conditions, I believe, which the Uniform Compensation Act would put us in here, has been successful in decreasing the cost of transmission, which is with us about seventy-five per cent of the money paid, to fifty per cent. I do not know as I ought to say to fifty per cent. The English Compensation Act, the same as all of them, gives specified payments. It costs the employer, through the system of private insurance, which must follow the Uniform Compensation Act, one dollar more to transmit from him to his employee the dollar which the bill says shall be paid to his employee.

Now, that is after an experience of fourteen years in England, on a bill very similar, or, in fact, the bill which the uniform bill is drafted upon, with many of the same insurance companies operating in England, and with a certain amount of private mutual competition.

In Germany, under the system of grouping employers, and they doing it themselves, the German employers themselves are doing this business at a cost of about twelve and one-half per cent of the money paid. Beyond this, and which is more important, I think, in a comparison of the two systems, the German law gives, through the German

employers' association, the power to make rules and regulations for the prevention of accidents. The same power is given to the insurance association provided under the Massachusetts bill. As a result of that power in the hands of the employers of Germany, regulating themselves, which is an entirely different proposition from state regulation, they have reduced these accidents in Germany about fifty per cent since that bill went into operation, I think very largely owing to this power of regulating themselves through these associations. That is the best means of bringing the poorer and less interested employers up to the proper standard. That power is given to the mutual association created under the Massachusetts act. Obviously, it cannot be given to private stock companies. There has been severe criticism of the Massachusetts act on the part of some employers because you have given it to the Massachusetts mutual created under the act. I doubt if it can be given to the private mutuals, such as we have here. I think that that is a great thing and is going to assist in the effectiveness of the act.

Now, those are the main principles in which the Uniform Compensation Act and the Massachusetts act differ. The Uniform Act seeks to create a new extended individual liability from the employer to the employee, and leave it there. The Massachusetts act, following the German act, seeks to place the cost of these accidents directly upon the industry, providing a machinery whereby the employers of Massachusetts may do as the employers of Germany have done, who have protected themselves and regulated themselves and provided these payments.

Now, it has been said that the bill is unfair. I do not view it in that light. The Massachusetts bill is a voluntary bill. An employer of Massachusetts could stay out entirely, if he could afford to, and be subject to the liability of our regular system with the defences removed. I do not think it would be a proper thing for him to do. He would be a little worse off than were the employers of Ohio prior to the passage of their act, because they repealed in 1910 the

defence of a fellow servant's negligence without giving them anything in return.

Now, it would remove the liability, and this bill does now, as it is, remove the liability, of employers to employees, for those employers who have accepted the act and their employees who have accepted it. It is not driving the liability companies out of business, because what business there is between employers and employees, where there is liability, would still be open to them, as well as their public liability business. But having removed the employer's liability by the law, as this bill has done, what reason is there for their existence for those employers and employees who come under the new law? There is under the new law, when it has been accepted by employer and employee, no liability from employer to employee. It is an insurance system whereby, by becoming a member of the association, the employer provides an insurance fund for his employees and relieves himself entirely from liability.

Now, it seems to me that the argument that you are doing the liability companies out of business, and that you should rearrange the bill so that they can come in, is not well grounded; because, having taken away liability from a certain class of employers and employees who seek to avail themselves of it, why then should we open up that condition, and provide for the coming in between the two parties of an outside profit-making concern which has previously been doing liability insurance business? As Mr. Bailey has said, the insurance amendment was attached to the bill in the Senate. I do not agree with Mr. Bailey, if the insurance amendment stands upon the bill, that it is necessary for an extended amendment. Mr. Lowell, the chairman of the commission, who does not agree with me in most of the things which I have said up to this point, I think agrees with me in this point, that the insurance amendment, if it stays in, will not make the bill unworkable. My personal opinion is that it decreases the efficiency of the bill about fifty per cent. But the insurance amendment provides that:

"Any liability insurance company authorized to do

> business within this Commonwealth shall have the same right as the association to insure the liability to pay the compensation provided for by this act, and a policy holder of such liability company shall be regarded as a subscriber so far as applicable within the meaning of this act, and when any such company insures such payment of compensation it shall be subject to all the regulations and obligations imposed upon the association."

I do not think there is anything in that amendment but what can be worked out. The amendment, of course, does not leave the bill in the same form that it would have been in if it had been drafted with the idea that all the insurance companies should come in and do this kind of business; but I think that the conditions under the bill, with that amendment in there, are such that it is workable, both for private insurance companies and the mutual insurance companies.

Now, Mr. Bailey has said something about the starting of the State Mutual Association. If the State Mutual Association never started, as the bill now stands, but private companies went out and got all the business, and the employers accepted the Compensation Act by purchasing policies from stock companies covering the payments provided under the bill, the act would still be in operation. The prospect, as I understand it, however, is that the state association — and I refer to it as the state association because other people do, as it is not in any sense state insurance — but that the employers' association created under the bill will start and will be ready to do business on July 1st. The board of directors was named by the Governor on the day of our last meeting, and I have heard it referred to, in comparison with the board of directors of any other insurance company doing business in Massachusetts, very favorably indeed. I know that they have in town to-day probably the best statistician in the United States, for the purpose of looking over the subject of this law with them. I think there is every prospect that the

association will start with a good list of subscribers, and I see no reason why it should not be a success. The directors of this association, some of whom at least were appointed with their assent and with their active interest, would seem to ensure a successful proposition, if there is any such thing as success. The directors of this association are the following gentlemen:

Patrick F. Sullivan, of Lowell, president of the Bay State Railway Company.
Walter C. Fisk, general manager of the General Electric Company at Lynn.
James E. Spence, of Rockland, president of the Rockland Trust Company, and shoe manufacturer.
Henry Howard, of Brookline, vice-president of the Merrimack Chemical Company.
Frederick C. McDuffie, of Lawrence, treasurer of the Everett Mills.
George W. Wheelwright, of Boston, president of the George W. Wheelwright Paper Company.
William B. Plunkett, of Adams, cotton manufacturer.
Fred N. Daniels, of Worcester, chief engineer of the American Steel and Wire Company.
George F. Willet, of Norwood, wool manufacturer.
Edgar J. Rich, of Worcester, attorney for the Boston & Maine Railroad.
William C. Day, of Springfield, treasurer United States Envelope Company.
James E. Murphy, of Brookline, president Stickney & Poor Spice Company.
Walter H. Longshaw, of New Bedford, cotton manufacturer.
Charles S. Dennison, of Boston, president Dennison Manufacturing Company.
Louis K. Liggett, of Boston, president United Drug Company.

Personally, while I am somewhat restrained by the fact that this proposed amendment is still pending before the

commission which drafted the act, and will probably be dealt with in one way or another in a later amendment to be made to the Legislature, I should be very glad indeed to see the amendment taken out, because I think it would make the Massachusetts act much more beneficial to the employers and employees of Massachusetts; but I do not think that in any sense it is absolutely necessary that it should be taken out. I think the prospects are now that the bill will operate very well even though the amendment is left in.

Mr. BAILEY: Mr. Saunders, may I ask a question or two about the working of the act as reported by the commission? I may appear very ignorant, but I do not yet fully understand how it is going to work. Within the sphere of these directors — and you have read their names — are divided all the industries of Massachusetts, into certain groups, as I understand it, according to the hazard of the business. That is right, is it?

Mr. SAUNDERS: The employers who subscribe to it.

Mr. BAILEY: Yes, precisely. The subscribers are divided into classes according to the nature of their industry, and then it is the duty of the directors to fix provisionally the amount of assessment or premium that they shall pay. That is right?

Mr. SAUNDERS: Yes.

Mr. BAILEY: Then that is supposed to be enough to cover what would be called for by the insurance accruing during the year?

Mr. SAUNDERS: Yes.

Mr. BAILEY: Then if it turns out that it has not been big enough there will be another assessment? That is right?

Mr. SAUNDERS: Yes.

Mr. BAILEY: And if they have paid in more than is called for there may be premiums?

Mr. SAUNDERS: Or dividends.

Mr. BAILEY: Dividends. Now, isn't it the fact, as Mr. Sherman pointed out, in Germany, that this compensation which is going to be paid is of such a nature that it is,

so to speak, cumulative? That is to say, a man is hurt this year, and he is going to get compensation for a period of years; so that what will be called for to meet that for this year will not be so big or any bigger than it will next year. Then the next year you have got all the new ones and you have got all the old ones, and so on for three, four, or five years; so that the mutual company comes to the fourth year and the fifth year, assuming the payment should continue usually in instalments of four, five, or six years, and when you come to the sixth year a member of the mutual company will have to pay a good deal more than he does in the earlier years. In Germany they pay for life, I think, in such cases, where the workman is permanently disabled. In all these statistics about what it costs employers in Germany they have not as yet got the final cost, because they have not yet got the maximum. They are still having new accidents to add to the total. Now, isn't that an objection to the Massachusetts scheme?

Mr. SAUNDERS: It would be an objection if the Massachusetts scheme had followed Germany to that extent. The German law does not provide for the payment of all losses sustained in one year out of the premiums of that same year, and in Germany they collect the money for a certain year to make the payments due that year. The German payments have been increasing. I do not know that they have reached their maximum now or not, but they did for a long number of years increase, because of the fact that the German bill carried these payments for the life of an injured employee, and of course they accumulate.

Now, this act leaves the German act at that point, and provides that the premiums assessed for any one year shall be sufficient to pay for the payments resulting from the injuries of that year; so that if the actuarial work is properly done there will be no increase in a premium over the first year. There is, of course, a contingent liability. If they do not assess a sufficient amount of premium the first year there may be another assessment, the same as in a mutual insurance association; but the premiums as assessed for any one year are to be sufficient to make the payments

provided for the accidents which occur in that year. Now, that is not going to be so serious a matter as it would be if the German law said the same thing, because the longest period which these payments run under the Massachusetts act is ten years; no accident can be a liability after the expiration of ten years; so that reckoning the cost of these injuries and the amount of payments is not a very serious proposition from the actuarial point of view.

Mr. J. E. McConnell: I would like to ask Mr. Saunders a question; perhaps I have misunderstood him. I have some figures here, Mr. Saunders, as to the compensation paid from the amount paid by the mutual employers' association in Germany in 1910. The compensation paid was 77.7 per cent, reserve 9.5 per cent, cost of administration 12.8 per cent. Now, what does that 9.5 mean? Is it a reserve fund?

Mr. Saunders: Yes. The German act has established a reserve. As originally passed they had no reserve whatever.

Mr. McConnell: So that at the present time Germany, under this system of compensation, as to which Mr. Bailey inquired, has a reserve for continuing the insurance out of the payments?

Mr. Saunders: It has a reserve, but rather in the nature of a surplus.

Mr. James A. Lowell: If I may answer the question, the Germans for a while, a long time, paid by the year, with no reserve at all, and they have recently tried to establish a reserve of nine per cent, or whatever it is, probably as the result of that attempt, but it has been so far not successful in anywhere near financing it. That is, their system is absolutely insolvent from any point of view of having assets at one time sufficient to pay liabilities which will accrue in the future. The result of it is in Germany that a man starting in a new business must pay insurance on all of the pensions which are running along, because those pensions are not paid for — have merely been paid for in the past, but no provision has been made for their payment in the future. So that a man just starting into cotton

manufacturing in Germany pays insurance not only on what his accidents are, on what the accidents are in that trade during the year, but for the large and ever-accumulating amount of the payments due on past insurance.

Now, if I may say a word now that I am on my feet, Mr. President. As Mr. Bailey has said, and as you all know, this act as it is passed is not the act which I approved of; but that is ancient history. I know when I am licked, and the act as passed I think is a good one. Now, the insurance companies should be allowed to stay in, and insure just as they have, for this reason. This mutual insurance company is a very new mutual Massachusetts company — I will call it — and is a very ambitious attempt. It may work and it may not. Personally I am rather skeptical. In Germany the associations cover the entire empire. That of course gives a great basis for building up a strong insurance company. We have no such thing in this state except in a certain few industries. There is such a basis in the cotton industry, there is such a basis in the boot and shoe industry, there is such a basis probably in the foundries of Massachusetts, there may be such a basis in the paper industry. But with those exceptions — and there may be a few more to come in — we have got to lump together a whole vast amount of small industries, with a very varying degree of hazard, and that is a thing which, as an insurance proposition, is a very difficult thing. That may make or mar this present system.

Another thing is that the German working people have been accustomed for a century to compulsory military training. The result of that is that any rules which are made for them are obeyed by them. The superintendent tells the man to do a certain thing and he does it. In our mills the superintendent tells a man to do a thing, and he tells him to go further. Now, that seems to be a small matter, but it is very important in the carrying out of these regulations.

So that it seems to me the situation here is this. Here we have a practical situation, with the attempt (and it may be a successful attempt, and if it is successful it will be a very great improvement over the present system) to bring into

Massachusetts the German system which has worked well. I disagree with my fellow-member of the commission that it would be a good result to have merely the Massachusetts association allowed to do business, and to have many employers stay out of the law. What we want in this law is to have a just law, giving compensation to every man injured — that is the first thing — and what we want is a law that will bring everybody under it.

Now, there will be many employers who, on the first of July, will be afraid of this new Massachusetts association, and those employers should be encouraged to come under the law; they should not be discouraged. If this Massachusetts association goes in alone, then the proposition will be, Shall I go into a new and untried thing, or shall I stay out and insure my advanced liability? What we want to do is to bring them all in under the law.

Now, lots of them won't come in if you leave merely the Massachusetts association. If, on the other hand, you allow them to insure in the companies which they have always been insuring in, many of them will come in, and that will give a result which will be very much better for the employees — and they are the fellows that I am looking out for in the first place — than a system where they stayed out and insured an increased liability.

Now, how will it work? You have your Massachusetts association. I have no question myself but what it will be in operation sufficiently to do certain business. So you will have your Massachusetts association in competition with your ordinary stock companies and your ordinary mutuals, and the result of that, it seems to me, will be very beneficial. If the stock companies charge premiums which the employers think are unfair, being too large, then they may go into the Massachusetts association. If, on the other hand, they go into the Massachusetts association and that does not run well, they can get out of it and go into the stock companies. It seems to me a much better proposition for a practical business community to allow the old ways of insuring this thing to continue. Then if it is found, after five years' trial, that this Massachusetts associa-

tion is so good that it would carry the thing well, and that the stock companies should not be allowed to interfere with it, then wipe them out; but it seems to me a good deal too long a jump to-day to wipe out everything all at once, without being sure that the German idea will work in Massachusetts, where the conditions are so different.

Mr. BAILEY: Mr. Saunders said that the act was workable as it now is; that is, that the stock companies, the existing mutuals and the new mutual, can work together under the language of Section 3. I would like to know just how that is going to be — if I might ask Mr. Saunders this question. As I understand it, if Section 3 is out, then every employee who gets any compensation goes to the new mutual — call it the Massachusetts company — to get his compensation. That is right? Now, if you have six other companies doing business besides the Massachusetts, the employee has got to go to whichever company his employer is insured with. That is right?

Mr. SAUNDERS: Yes.

Mr. BAILEY: And, as I understand the frame of the law, as it was made originally, these members of the Massachusetts mutual are assessed, we will call it, varying amounts, according to the hazard of their industry, and that is all pooled into one pot. That is right? So that the employee goes there. All the money that has been drawn in at the different rates of assessment from the employers who are subscribers — that all goes into one fund, and so long as it lasts there is money to pay any employee.

Mr. SAUNDERS: Just there, Mr. Bailey. The law provides that the mutual created under the act shall group the employers in accordance with the degree of their risk, and that the assessment of premiums, and the dividends if any, shall be made in accordance with the group.

Mr. BAILEY: Yes; but the money goes into one pot?

Mr. SAUNDERS: The money goes into one treasury.

Mr. BAILEY: One treasury, one fund; and the employee gets his money out of that fund. Now, with the regular company, why, there is no fund, in one or two mutual companies. The employee is going to go to a regular

established company to get his money. Now, let me ask you, isn't it rather meagre — this provision in Section 3? Isn't that a pretty slim sort of a provision to guide an employee who is going against any regular company to get compensation? Shouldn't there be something more than we have now? I am talking about the working of the act.

Mr. SAUNDERS: Why, the act is drawn referring to the employer who comes under the association as a subscriber all the way through.

Mr. BAILEY: I assume that.

Mr. SAUNDERS: The act is drawn referring to the association, the new mutual, as "the association."

Mr. BAILEY: Yes.

Mr. SAUNDERS: Now, this section is put in and provides that any insurance company authorized to do business within the Commonwealth "shall have the same right as the association to insure the liability to pay the compensation provided for by this act," which I presume means to write a policy providing for the compensation; "and a policy holder of such liability company," that is, the employer, "shall be regarded as a subscriber." Now, I understand by that that the definition of subscriber applies to that policy holder.

Mr. BAILEY: Now, look at the employee. How is he going to get his money and where is he going to go to get it? Don't you need some more detailed provisions?

Mr. SAUNDERS: I don't think you do, because we have provided for notices on the association, and for claims, and all that sort of thing; and my idea of this section is that it simply substitutes the particular insurance company in the place of the association, and gives the employee all the rights against the particular insurance company which he would have against the association if his employer was a subscriber to the association.

Mr. BAILEY: The workman has nothing to guide him except the provisions of the act. He doesn't get any insurance policy or any accident policy, or anything of that sort; he just does what the act tells him.

Mr. SAUNDERS: No; he gets a responsibility from the insurance company.

The VICE-PRESIDENT: I do not want to interrupt the hearing, but I think speakers should address the chair.

Mr. SAUNDERS: Excuse me, Mr. President. Mr. President, I understand that the employee of an employer who has an insurance policy gets his claim against the insurance company in exactly the same form as he would have it against the association, if his employer was a subscriber to the association.

Mr. BAILEY: Exactly.

Mr. SAUNDERS: And all the proceedings would be exactly the same.

Mr. WILLIAM H. BROOKS: I have listened with some interest to the questions that have been propounded and to the answers that have been made, with reference to the insurance here. It seems to me that this Compensation Act is naturally an experiment. It seems to me that a trial of it — a fair trial of it — should be made, without any amendments. Lapse of time undoubtedly will disclose its virtues and its frailties, if it has any. It does seem to me that there should be a fair trial of this act without any attempt at an amendment at this time; that there should be no tinkering with it now.

I have not made any study of the various Workmen's Compensation Acts. I am a believer, and have been for years, in the compensatory theory. I take it that this act is the result not only of study and research and thought, but it is the result of continued and combined effort, under all the circumstances, to obtain legislation; and I take it that the makers of the act believed, when they passed it, that it was the best, taking all things together, that could be accomplished.

Now, there are three proposed amendments here. One is that the board provided for shall be wiped out and that the questions shall be submitted to the Court. I think the act should stand as it is in that respect.

Now, why should Section 3 of Part V. be abrogated? Why should it be repealed? What earthly reason is there

for it? I know of none. Section 3 provides that the liability insurance companies shall come within the regulations and the provisions of the act. It gives the employee just as much notice what to do, and what his rights are, as in the case of the mutual company. I do not believe, and never have believed, in states or municipalities entering into business enterprises, and I take it that is what the state is doing here to a greater or less degree. They have very seldom been successful. Politics is always bound to enter into appointments; and it does seem to me that the companies — the liability companies — should have the right to do business in this Commonwealth, and I speak from an employer's point of view.

I have taken occasion during the last week to have investigations made among employers of help in my section. They are suspicious of the state mutual insurance plan, and I think they have a right to be. There is no liability of theirs fixed — necessarily it cannot be — if they are to be members of the state mutual. They do not know what they are going to be called upon to pay from year to year, and I think most of them would prefer to take their chances with the liability companies and pay the premium once for all. As one of them suggests to me, suppose one of these concerns that is a subscriber becomes bankrupt, who "pays the shot" for him? It is the solvents that pay for the insolvents; and I suppose it is a very well known fact among us all that the large concerns are the ones that proportionately have the fewer accidents. The large, modern, well-equipped, carefully-conducted concerns are the ones that have fewest accidents. It my town there are two large concerns, employing thousands, who for years have had no claim made upon them as the result of accident.

Now, is this the fact — and I would like to ask my friends who know more about this than I do — that the well conducted concern, the carefully managed concern, the well equipped concern, must "pay the shot" for those who are not so well equipped, not so carefully managed? It seems to me they must, in whole or in part. That is, it makes no difference about the grouping. Now, leave things alone and

let time, the great healer, cure the defects, if any should be found to exist.

It may be suggested that I have been a defender in personal injury cases. It is true, and I have been employed by insurance companies in years somewhat remote; but at the present time, and for two or three years, I have simply been an adjuster, and have paid, not because I was compelled to by the courts, but because I was compelled to by my clients, and to my great loss. The Chairman, I think, in his opening remarks, suggested that he got close to witnesses. I had supposed that probably he got pretty close to juries. I have very seldom succeeded in being able to convince juries that they ought not to give something; and so my employers, by reason of my unsuccess — such of them as are left — have told me to settle. I have no political aspirations that can be subserved by any stand I take. I am somewhat like the chairman, our President-elect. I have got all of his disabilities, and more; and if that, Mr. President, is a symptom of accumulated years, then any foolishness that I have exhibited in my remarks must be attributed to my senility.

Now, gentlemen, seriously, it seems to me that we should give this act a fair trial. You start making amendments or attempting to make amendments now, and the result will be that other amendments will be made, with possible disastrous consequences to the act itself. I think that is all I have to say.

Mr. ANDREW J. JENNINGS: I would like to ask Mr. Saunders a question. I do not know much about the act, though I have looked it through once or twice. You spoke in your opening remarks, I think, about it being an industrial compensation or accident law. Doesn't it apply to everybody who employs anybody? Aren't we liable? How is it with me as to my three clerks, if in their carelessness they crack each other's heads? Take the butcher or baker, or anybody except farmers and housekeepers who employs help, aren't they liable under it?

Mr. SAUNDERS: Mr. President, the repeal of the three employers' defences, which is the only compulsory part of

the act, applies to all employers except employers of domestic servants, farm laborers, and the employers who come under the new act.

While I am on my feet I want to simply say something in reply to some questions which Mr. Brooks asked. First, I want to call attention to the fact that this is not state insurance. The only interest which the state has in it is that the Governor has appointed the first board of directors, and the state has given it $15,000 to get started. After that the state has no interest in it, except that it exercises a little control, through the Insurance Commissioner, of the premiums. The question was asked, Who pays in cases of insolvency? The law provides that the premium shall be taken in advance, so that cases of insolvency would not affect either the employee or the association.

Mr. BROOKS: May I be permitted, Mr. President, a question?

The VICE-PRESIDENT: If the gentleman yields.

Mr. BROOKS: Do I understand that the employer in advance pays all that he is liable to pay for a year? I do not so understand it.

Mr. SAUNDERS: Mr. President, not all that he is liable for. That would be impossible for him under any mutual association.

Mr. BROOKS: I thought so.

Mr. SAUNDERS: But the premiums which are fixed are payable in advance. If they are successful in fixing them at the right figure, why, he pays all in advance.

Mr. MCCONNELL: What is the motion before the Association?

The VICE-PRESIDENT: The motion before the Association is the motion made by Mr. Anderson: That it is the sense of the Association that Chapter 751 of the Acts of 1911 relating to workingmen's compensation for injuries be amended in three particulars. Do you desire the whole motion?

Mr. MCCONNELL: No. I desire to amend the motion by separating the three parts, and have the motion read

that it is the sense of this Association —now will you read the first part?

The VICE-PRESIDENT: Mr. McConnell moves that the motion be divided, and that a vote be taken first upon the first question, that it be amended by the repeal of Section 3 of Part V.

Mr. JAMES A. LOWELL: I second the motion.

The VICE-PRESIDENT: Second, by putting the enforcement of the act within the jurisdiction of existing courts; third, by providing for compulsory State insurance instead of the insurance plan provided in the act.

Mr. JAMES A. LOWELL: As I understand Mr. McConnell's motion, there is now before the house merely the first one of these, namely, that it is the sense of this Association that the act be amended by the repeal of Section 3 of Part V.

Mr. MCCONNELL: That is right.

Mr. JAMES A. LOWELL: And have that alone up for discussion.

The VICE-PRESIDENT: Let the chair understand exactly Mr. McConnell's motion. Please state the motion.

Mr. MCCONNELL: My motion is that the matter before the house for discussion now be the first part of the motion; that the motion be divided and that the first vote be upon the repeal of the insurance amendment.

The VICE-PRESIDENT: The motion before the house, then, is that the second and third provisions — the consideration of those — be suspended, if I am right.

(The motion is put and carried.)

The VICE-PRESIDENT: The question before the house, then, is on the motion made by Mr. Anderson, that it is the sense of this Association that the chapter be amended by the repeal of Section 3 of Part V.

Mr. MCCONNELL: Mr. Chairman, I have a good deal of doubt in my own mind whether this matter should have been taken up by the Bar Association at all; but, having once been taken up and considered, it seems to me that the act of the Bar Association should be such as to win the approval of the whole state. Now, on this question before

the house, recognizing the number of able attorneys here representing insurance companies, I with a good deal of temerity launch a javelin at the insurance amendment, but in the discussion here it does not seem to me that they have gone to the fundamentals.

There are three parties directly interested in this act, the employer, the employee, and the state. As a body of lawyers to some extent we are outside, and any act of ours must be an unselfish action in this humanitarian and economic legislation, because if it is tinged with selfishness we will merit distrust and suspicion. Now, I am in favor of the repeal of the insurance amendment. What Mr. Brooks has said, that he believes that the bill should go on and have a fair trial unamended, I believe also. But this bill, as it came from the legislative committee which considered this bill, had no insurance amendment. It was tacked on in the last days of the Senate; and, as I understand it, the great fight that is coming up in the Legislature this year, practically with the whole body of wage earners behind it, is for the repeal of that insurance amendment. Now, if we are going to express an opinion upon the repeal or approval of this insurance amendment, it seems to me that it should be an opinion that should represent the whole Bar of Massachusetts, and we ought to be very careful, being a very small portion of that whole Bar, because our act will be construed as the act of the Bar of Massachusetts, and must either be considered a reactionary judgment, or else one in line with economic and social progress.

Now, I am in favor of the repeal of this insurance amendment principally for four reasons. First, because the insurance amendment continues the great system of waste. Secondly, because it does not tend to the prevention of accidents. Thirdly, because it keeps up the antagonism between employer and employee. Fourthly, because it does not permit the sympathetic coöperation between employer and employee that the mutual associations in Germany permit.

Now, first, on the question of waste. As Brother Saunders has said, there is a great difference between the

two systems, the German and the British systems; and Brother Saunders has founded the Massachusetts act, so far as it can be accommodated to Massachusetts conditions, upon the German system. Now comes this question of waste which the insurance companies have under the present system. If I understand the scheme of this workingmen's compensation rightly in this country, it came not from the laboring element, but from the employers themselves, in a protest against the present system of insurance, which caused great waste. The New York Commission, the Wisconsin Commission, and about every commission that has reported, has practically stated that out of the dollar that is paid by the employer for the injury to his employee, it costs about seventy-five cents on an average to take that twenty-five cents to his employee. I have the figures here in Massachusetts which I compiled yesterday, though these are not the last figures. But take the four leading companies. Take the Employers' Liability Insurance Company. In Massachusetts their gross premiums in liability insurance were $970,640.71, and their gross losses $357,064.11. In the Travelers', the figures were $483,943.71 against $153,472.46. In the Ætna, $245,-899.13, with gross losses of $102,254.43. In the London Guarantee, $165,472.73, with gross losses of $59,786.15.

Now, that is simply characteristic of the system through the whole country — that out of the dollar paid by the employer to the employee it costs about seventy-five cents to transmit twenty-five cents to the employee. So that the two fundamentals must be: First, that plan is the best plan which transmits a dollar from the employer to the employee with the least diminution of expense; and, secondly, that plan which is best designed to prevent accident.

Now, in Massachusetts it is costing us at least — although last year I think the figures were reduced — from sixty to seventy cents for administration expense. Under the mutual system, which I assume is to be tried here in Massachusetts, framed on the German system, the cost of administration in Germany is only twelve cents out of the dollar, including the cost of the prevention of accident. So that it

seems to me — and I do not care to take up much time — that we must follow one of two systems. Under the insurance amendment we are going to follow the English system; under the act without the amendment we will follow the German system. One system eliminates waste; the other system increases waste.

Now, secondly, as to the prevention of accident, what is going to be the result? Under the system of the Saunders bill as it originally stood without the insurance amendment, these mutual associations are given power, as they are in Germany, to compel the use of safety devices; and, as Mr. Brooks states, the solvent or up-to-date employer has got to pay the losses for the away-behind employer. The result is going to be that in these mutual associations, having legislative power to compel the use of safety devices, the association, or the up-to-date employers, are simply going, in order to save their own pocket-books, to compel the use of safety devices, and bring the others up to the standard that they should be; in other words, a greater question than compensation is the prevention of accident.

Now, under the system of the private insurance company amendment there is absolutely no such provision, there is no hope of anything being done for the prevention of accident. The British departmental reports upon their system, after fourteen years' experience, state that the British system, under those insurance companies, had no effect whatever upon the prevention of accident, while the German reports show that accidents have been reduced at least fifty per cent.

Now, the third proposition, and that is that under the mutual association there is going to be sympathetic coöperation between employer and employee. We all know the antagonism that is aroused under the present system, whereas under the new system each employer has no interest whatever except to see that his employee, for the time that he is injured, gets injury compensation.

I do not care to take up any more time; I simply wanted to state hastily some of my conclusions. At the same time I believe this: that inasmuch as when this act came from

the Legislative Committee it embodied in its form a mutual association based upon the German system, which was amended in the last days of the Senate, that if we are called upon — and I doubt the advisability of expressing any opinion upon this — but if we are going to express an opinion I hope it will not be a reactionary opinion of approval of this amendment, which was passed in the last days of the legislative session, but rather standing by the act as it was originally passed.

Furthermore, Mr. Saunders said that he believes this legislative amendment will reduce the efficiency of the act fifty per cent. I think his estimate is altogether too small. In my judgment it practically nullifies the act, for this reason. This company has got to have the support of the state and of the employers to be a success. The result is going to be that if the insurance companies are allowed to do business they are going to offer to the up-to-date, safety-device-using employers a rate in accordance with their ratio of accident. The result will be that all the poor employers, the employers without safety devices, are going to be dumped into the state company. Necessarily, unless they all go together in the beginning, standing together, the up-to-date employers compelling the others to adopt safety devices, and in a few years bringing up the average of safety and efficiency, the result is going to be in the beginning that the insurance companies are going to select the large employers, with little risk, giving them a rate that the state association cannot afford, with the result that all the bad risks are going to be dumped into the state association.

Furthermore, it seems to me that the insurance companies, the private insurance companies, are going to enter actively into competition; there is no question about that. Their aim and purpose must be to get business — to decry and antagonize the state association as much as possible. It seems to me under such circumstances that the state association cannot hope for a successful existence in case the private insurance company is allowed to do business. To my mind it means that the state association will be a failure, and eventually we will go back where we were, with

this result: that inasmuch as the liability is increased (and the experience of every country or every state that has so far tried it is that with the taking away of the common law defences the premium for insurance has at least been doubled), it means that the employer has got at least to pay double premiums, in the same manner in which he paid under the old system. Therefore, Mr. Chairman, while I doubt very much the advisability of this small body here attempting to place the whole Massachusetts Bar on record upon any phase of this question, because it is perhaps going to be the most important question threshed out in the Legislature this year, yet, if it does take action, it seems to me that the only action it can take in accordance with economic and social progress is against the amendment and not in favor of it.

Mr. FRANK E. DUNBAR: For reasons which have been suggested and others which are apparent, and in view of murmurings over the lapse of time since we arrived here, I move that this present sub-division of the question be laid upon the table, and that a vote be taken in fifteen minutes.

(The motion is seconded.)

Mr. JENNINGS: I rather object to its being laid upon the table, to be taken up at another time. I fully agree with what Mr. McConnell has said. I do not think we have a right, in a matter like this, to place the Massachusetts Bar Association on record, either in favor or against it; and, if the last motion is amendable, I would amend it by moving that the matter be indefinitely postponed, so that it cannot be taken up without notice to all of us.

The VICE-PRESIDENT: The motion to lay on the table I believe is not debatable.

Mr. DUNBAR: I would like to make the motion which Mr. Jennings suggests, and I assent to his motion. I accept the amendment, Mr. President.

The VICE-PRESIDENT: Is there unanimous consent that the motion to lay on the table shall be withdrawn? The chair hears no objection. The motion therefore is that the matter be indefinitely postponed.

Mr. GEORGE W. ANDERSON: I do not propose at this

time to enter upon a discussion of this matter; but I think I ought perhaps in fairness, as I was somewhat the cause of this trouble, to say that I should have felt bound to be present here at the beginning of the meeting, to take such part as I might in the discussion, if I had not been actively engaged in argument before the full Court, which gives way for nobody on earth, and I came immediately from there up here. As I have not heard the discussion, I shall say a word only on one point; for I have been heard at a great deal of length by my brethren as to my views on three questions, and I do not think I ought to trouble them further.

I do not think it would be fair to the Bar or to the President to take a vote here this morning on an important question of this kind, and have it heralded abroad as the vote of the Massachusetts Bar Association on a question of legislative policy, on a great question affecting the pecuniary interests of the insurance companies, which are naturally and obviously here represented in force. Indeed, I am reminded this morning of the old chestnut of the story of the man who came into the office and begged for a shilling for the poor, God-forsaken, unchristian heathen; the gentleman at first gave him a shilling, and then laid down a pound. And the solicitor says, "What is this? What is the pound for?" "Oh," the donor says, "that is to take the shilling to the heathen." Well, the pound takers are all here; I do not believe the shilling getters will stand much chance in this congregation. But it seems to be rather a matter of agreement that the pound takers ought not to vote as being the keeper of the sentiments of the shilling getter. I am content under the circumstances to have this motion laid on the table or indefinitely postponed. Having provoked some discussion, and I hope some thought, it will have to be dealt with by the Legislature and cannot be dealt with by us. I should be content, if the Association wanted to, to have the whole matter referred back to the Legislative Committee, but I do not ask that unless somebody else wants it.

Mr. W. H. NILES: Before the discussion is closed, I will call attention in one word, if you please, to the report

of the Committee on Legislation, because this will not be time lost, even though the opinion of the meeting seems to be almost unanimous upon this question. On page 2 of our report we use this language, after referring to the bill. I have read it before, but most of you gentlemen were not present:

> "Some changes, however, seem imperatively necessary to render its operation practical, workable, and effective, and rather than to propose at this time any radical change in the plan and general scope of the act, your committee recommends that this Association cooperate with the Legislature in an impartial endeavor to perfect the act as far as possible, leaving greater changes, if they should appear to be necessary, to be made when the application and effect of the act shall disclose more clearly just what changes therein are desirable."

Now, that language was adopted by our committee after repeated sittings, and spending hours and days in the consideration of this matter. It was, I believe, the unanimous opinion of our committee, possibly making an exception of Brother Anderson, and that is the opinion of our committee at this time. I think, Brother Anderson agreeing with us this morning, that it is inadvisable to consider this matter; I may say it is the unanimous sentiment of our whole committee.

The VICE-PRESIDENT: The question is upon the motion of Mr. Jennings, that the subject-matter now before the house, that it is the sense of the Association that Section 3 should be repealed, should be postponed indefinitely. Are you ready for the question?

(The question is put and carried.)

The VICE-PRESIDENT: It is a unanimous vote. According to parliamentary rules, I suppose that disposes of all the business.

Mr. ANDERSON: Mr. President, it seems to me very clear that we should not proceed to a discussion of the

other propositions, by this small body, if we cannot get on with the first one. I make the same motion, that they all be indefinitely postponed.

The VICE-PRESIDENT: I think the chair would rule, Mr. Anderson, that motion for consideration having taken that question solely out of the main question, the others have been postponed. The chair does not see that there is anything now before the house.

A motion to adjourn was made and carried.

A PART OF THE EXERCISES

AT THE DINNER OF THE ASSOCIATION, DECEMBER 28, 1911.

The Secretary read the following letter:

THE CHARLESGATE,
BOSTON, December 20, 1911.

ALFRED HEMENWAY, ESQ., *President.*

MY DEAR SIR: I am sorry to say that my age and bodily condition make it impossible for me to accept your very kind invitation to attend the Bar dinner. It is as much as I can do to struggle along, living quietly. But I may say that I have a great admiration of the Bar, as a class, and should love to meet the brethren. Nothing in life is now dearer to me than their good opinion, although I should not like to appear to seek the public expression of it. I might indeed use the words of the play with a slight change:

"I love the lawyers, but do not like to stage me to their eyes, though it do well, I do not relish well their loud applause, Aves vehement."

And so, with all good wishes to them and to yourself personally I remain

Yours very sincerely,

CHARLES ALLEN.

PRESIDENT HEMENWAY: Chief Justice Knowlton and Justice Charles Allen were both called from the Bar to the bench by Governor Long, and it is most fitting that we should now hear from him. It is with pleasure that I present ex-Governor Long to you as the first man whose acquaintance I made when I came to Boston to practise law. I introduce him as my friend, your friend, and the friend of every good cause.

REMARKS OF EX-GOVERNOR JOHN D. LONG.

In other words, Hemenway owes to me all that he is. I am sure, however, that nothing but the kindness of my dear old friend and partner who presides at this law dinner, and who might well preside at any sitting of the Bar or, for that matter, of the bench, or else an uneasy fear on his part that he would run short of speeches — as if that were possible in such a multitude of tongues as this — has led him to draft me to this service.

Like Governor Foss, I never was much of a lawyer, although evidently I got a little farther than he did. And politics and other idle follies, Governor, made me much less a lawyer long ago.

It is told of Senator Daniels of Virginia that he once wrote a book in his youth on Negotiable Instruments. I have noticed that many of these law treatises are written by young lawyers who improve or occupy the little leisure that their strenuous practice affords them for such work. Somebody asked the Senator how he happened to write the book. He said that he had occasion in his early practice to study the point whether or not a sight draft carries interest, and that led him to make a study of negotiable instruments generally and so he wrote his book. "Well," said his questioner, "Senator, *does* a sight draft carry interest?" "Well, I declare," said he, "I have forgotten; I don't know." I wonder if anybody here can tell me whether a sight draft carries interest? Nobody answers, and if the Senator were here he would be justified in saying that he has forgotten more law than the Massachusetts Bar ever knew. So I too have forgotten much of the law that I ever knew. You know, Hemenway, that when we were together you knew law enough for us both and for the Bar and for the Court. I suspect that — I won't say Mr. Justice Rugg, but Mr. Justice Hammond, who has had a longer experience, both of whom we honor to-night not only for themselves but for the great Court which they represent — I suspect that the judge would say, judging from the arguments to which he has listened, sometimes perhaps wearily and impatiently, that a marvelous degree of ignorance of the law is characteristic of

some other lawyers as well as myself. Who was it — you know, Hemenway — who was it that said that one of our most prolific and pugnacious members of the Bar — of course of a former generation — reminded him of a bulldog with confused ideas? Nevertheless, to quote from an opinion of the Court, written, I think, by Mr. Justice Holmes, for it sounds very much like Holmes —

> "You may break, you may shatter the vase if you will,
> But the scent of the roses will hang round it still."

Not altogether shattered, I still hang by the skin of my teeth on the ragged edge of the profession and both its memories and its associations are very dear to me. To-night I claim comradeship and good fellowship with you all.

A week or two ago I applied to the Massachusetts Highway Commission for a license to operate an automobile. I am not more familiar with the recent statutes relating to automobiles than Judge Hammond is. I never run at excessive speed except in the town of Hingham, where in that respect the police are entirely indifferent, as my friend Judge Flynn, if he is here, will testify. Among other questions I was asked whether I had any mental incapacity or infirmity, to which I answered with a concise "No." And I am not going to plead guilty to-night to any disqualification to run the automobile of my tongue, with the comforting assurance, however, that if my steering wheel goes wild I shall do no harm and certainly suffer none.

As you said to-day, Mr. President, in your admirable address in the opening of the meeting this forenoon, ours is a noble profession. Massachusetts has an unsurpassed record in its attainments. Her firmament is studded with stars of the first magnitude, and if there be lesser lights — for one star differs from another star in glory, as I differ from Hemenway — the difference is made up by the splendor of the combined constellations. May you one and all keep that splendor unsullied, undimmed by the murk or mists of meanness, lighting and not misleading the body politic and social, the foundations of whose public welfare rests so much upon the law.

To me, the responsibility of a lawyer is immeasurable. The terrible problems of our day in this democracy of ours — splendid indeed, but prolific of snares and perils, and never more so than now — appeal to the lawyer with a special force. He is the leading factor, not only in the application of the law but in the making of the law. He is a great majority of our Congress and of our legislatures. With his glib and nimble tongue and with his trained mind he is the most efficient man on the stump and through the press in moulding public sentiment, in electing our magistrates and our law-makers. And above all he should stand firm as a rock against any subtle or initiatory movement to impair the independence of our judiciary, to make our courts subservient to the tempestuous waves of hasty popular clamor by inciting or misdirecting them. Blackstone — as you so well remember, Governor — you will correct me if I quote him wrong — Blackstone puts on a level his two great departments of the law, the rights of persons and the rights of property. To my mind the fundamental principle of an enduring democracy is the equality and freedom of opportunity on the one hand and the security and variety of possession on the other. Nothing would sooner bring this democracy of ours to chaos than to break down the safeguards which secure to every man the fruits which his enterprise and ability have won him, nothing sooner than to deaden the ambition with which these very shiftings and inequalities of property inspire every man to better his condition. There is danger attending these great accumulations, but I have no overwhelming fear of them. They break into fragments in most cases. But especially under our system these great accumulations can never exist for the accumulator alone; they must needs be the reservoir of which he is the temporary steward — fortunate, perhaps, you think; but for myself I would rather be incarcerated in Charles Street Jail than to live under the annoyances that beset Andrew Carnegie or of John D. Rockefeller — stewards, fortunate sometimes, but under a most onerous responsibility for the diffusion of these accumulations in wages, in employment, in distribution through the myriad

channels of our industry and enterprise. Let every step be taken for the regulation and the swift and sure control of these vast assemblings of active capital which, after all, are now essential to our great enterprises — which furnish the sources of investment for the savings of the great body politic, which furnish the source of the wages that are distributed in the maintenance of labor in its present advanced condition, and which also are the source of larger general convenience and comfort, bringing cheaper light, transportation, new resources everywhere and for all. Regulate and control them so that they shall serve the public welfare as with their mighty and massed power they can so well serve. But let there be no destruction, no such debilitation of them that they can serve that purpose no longer.

If I were asked to name some lawyer who embodies the high characteristics which should distinguish our profession — let me quiet you, gentlemen, by saying that I do not intend to make any personal application here — who embodies the high characteristics which should distinguish our profession, who was true to them at the Bar, who exemplified them on the bench and, transferred to public service, has put them into his administration of a great public office — in error now and then, of course, but always the error of high mind and honest purpose and fearless conviction — I would name William H. Taft, President of the United States. But it is not necessary to go outside our own border to find examples equally worthy of our eulogy and our emulation. I think you referred, Mr. President, to some of my judicial appointments. I may not have risen to the judicial level, but I was a judge maker. In that way I illustrated the fallacy that is sometimes held, that a creator is bigger than the thing created. Talk about your appointments, Governor Foss — one-third? Why, when I retired from the governorship — and I share with you all the feeling that it was a great misfortune that I ever consented to retire, that I did not hold on during the whole intervening thirty years — at least, until a year ago — when I retired every judge on the Supreme Judicial bench held his commission from me and more than half — not a scanty third — more than half the judges of the Superior Court.

GOVERNOR FOSS: I have had only one year; you had three.

EX-GOVERNOR LONG: And it is a special gratification to me, I assure you, Mr. President, that two of my appointees to whom you have so fitly referred — Judges Allen and Knowlton — were among those who held my commissions. Allen and Knowlton, retired but still living and breathing through the pronouncements of the law with which they have illuminated and enriched our jurisprudence, ideal citizens, ideal lawyers, ideal judges — what honor they brought to Massachusetts! What just and beneficent service they rendered! The old Commonwealth will still be safe if such men sit in her high places, making firm the foundations of her security, the rock of her salvation. May I say to each of you, go and do likewise.

REMARKS OF CHIEF JUSTICE ARTHUR P. RUGG.

MR. PRESIDENT AND GENTLEMEN OF THE MASSACHUSETTS BAR: First permit me to acknowledge my appreciation of your cordial greeting. I accept it not simply or chiefly as an indication of your personal good will, but primarily and principally as an expression of the loyalty and respect of the Bar for the constitutional court of the Commonwealth. I regard it also as a happy augury of the continuance of the cordial relations which have heretofore existed between the Bar and the Court.

No one feels more keenly or laments more deeply than I the occasion which renders it necessary for me to speak for the Court. The retirement from the office of Chief Justice by Marcus Perrin Knowlton caused wide and deep sorrow universal among our own Bar and people, but extending far beyond the State boundaries. For he had added distinction to a court which had been renowned for more than a century throughout the land. That the reason for his retirement was impairment of eyesight, at a time when his judicial faculties appeared to be at their zenith, gave a peculiar pathos to the general sadness in his leaving the Court. He

had been a member of the Supreme Judicial Court for twenty-four years, a length of service surpassed by only four since the adoption of the Constitution. During this period he has illumined by his opinions almost every branch of jurisprudence. It has been said that the body of the law passes in review before our court of last resort every quarter of a century and is restated in terms of present-day needs. If this be so, what a vast contribution he has made to the visible garments of the law! The vigor and incisiveness of his intellect, the breadth and profundity of his learning, his sound judgment and practical wisdom, the dignity, calmness and kindness of his manner, have combined to give him a place among the few who have attained "the lonely summits of our profession." In the enforced retirement from the work he loved so passionately, there follow him the affectionate regard of the Bar of the Commonwealth and the sincere respect of the people. He has all

> "That which should accompany age
> As honor, love, obedience, troops of friends."

May he have a speedy recovery from his affliction and years of peaceful happiness.

Of the three departments of government the judicial alone can have no initiative program. Its function is static and not dynamic. Its single end and purpose is to administer justice between parties, to give utterance to the principles by which life, liberty and property of the individual and the people are protected under the law from undue encroachments from any source whatsoever. Indeed, the ultimate object of all laws and every system of jurisprudence is to do justice between parties. The judicial department has this plain duty, simple in statement, arduous in performance. It is inspiring to the Bar of Massachusetts to recall the history and achievements of its judiciary in the past. The Supreme Judicial Court is, I believe, the oldest court in its uninterrupted existence upon this continent. It is a continuance under a new name of the Court known under the province charter as the Superior Court of Judicature, which existed from 1699 until the Constitution was adopted in 1780.

Reckoned thus it has had a career of something over two hundred years, of which a century and nearly a third has been under its present name. The records of the Superior Court of Judicature have never been published. It is not possible readily to determine with critical accuracy the character of its work. It is praise enough that the people of the province in general appear to have been satisfied with the way in which it administered justice. The publication of the opinions of the Supreme Judicial Court commenced in 1804.

Its record since that time is an open book. No Massachusetts lawyer — nay more, no Massachusetts citizen can contemplate that record without emotions. It has always commanded the respect of the Bar and the confidence of the people. The jurisprudence of Massachusetts has been the subject of encomiums from many sources. Let us listen to the words of one as well qualified as any to express a discriminating judgment. Mr. Justice Miller of the United States Supreme Court once wrote in a letter for publication:

> "Without being invidious or undertaking to name other courts of high standing, there are many things in the history and character of the Supreme Judicial Court of Massachusetts which entitle its reported decisions for the last hundred years to great consideration."

The standing and reputation of a court rest upon three principal conditions. The first is the character, ability, learning and experience of its members. It would be a useless labor to try now to define the qualities of a great judge. His portrait has been painted many times by master hands. Choate with wealth of power drew his features from the living example of our own greatest chief justice. Mansfield's impetuous eloquence and the quaint words of the acute and wise Bacon each have given a description of his attributes. For myself none seems more comprehensive or accurate than that which has come down from the great lawgiver of Israel: An able man, one who fears God, a man of truth, hating covetousness. But however he may be portrayed, we have

but to look to the history of our court to find many fitting examples. The time allotted would fail were I to attempt to mention them all. Parsons, Chief Justice for nine years, was one of the most powerful minds of his generation. It has been said of him that while his "associates were great he was wonderful." Parker, a member of the Court for twenty-four years and its Chief Justice for fifteen years, among other great decisions laid a solid foundation for the law of municipal corporations, in Stetson *v.* Kempton, 13 Mass. 272. Then came Lemuel Shaw, who for thirty years gave strength and stability to the Commonwealth as her Chief Justice. No name in the annals of our judiciary shines with so bright a lustre. It has shed light wherever the common law rules. To recount his contributions to jurisprudence would be to discuss almost every branch of the law, and to refer to landmarks in their progress. The position of Chief Justice Bigelow in following so great a predecessor was most trying, and yet the Court lost nothing of public confidence or professional esteem while he was chief justice. It has been said that his opinion in Brattle Square Church *v.* Grant, 3 Gray, 142, could not have been written even by his great predecessor. Then followed Chapman and Gray and Morton and Field and Holmes, all of whom were known personally to many of you. Among the justices of the Court have been some whose judicial qualities have equalled those of several who have held first place. Wilde and Putnam and Dewey and Hoar and Thomas and Wells and Colt and Devens and others have contributed to make up the great whole of the case law, of which the Bar are justly proud. It is the tribunal which for the most part determines finally all questions affecting the life, liberty and property of the people of the Commonwealth. It is the peaceful substitute for force in the settlement of all disputes between her citizens. The traditions of this Court are most inspiring. Its heritage is magnificent. But inspiring traditions and magnificent heritage are not the equivalent of present accomplishment. There is never absent from the mind of each one of those, who to-day are undertaking to do its work, a sense of the awful responsibility confided to their keeping. The

Court must maintain untarnished and undimmed the standards of the past. It must meet and solve rightly all the new legal problems which changing civilization in its advance may bring to it.

The second condition for the standing and reputation of a court is the variety and character of the questions brought to it for decision. A state whose civilization is stationary will hardly be expected to furnish an example of a great court. The Supreme Judicial Court of Massachusetts in the century just ended has had a great opportunity in the tremendous progress of the State herself. The expansion of her commerce, the upbuilding of her enormous manufacturing and industrial interests, the development of her material resources, the institution of unique public undertakings for promotion of the health, education, and happiness of the people, the establishment of great charities, the protection of the weak against encroachments of the strong, the manifold illustrations of the exercise of the police power, the phenomenal growth in the number and population of cities — each have contributed their share of legal propositions to be decided. Few states in the Union have afforded a wider or more important field than Massachusetts for great judicial service in the determination of the difficult and intensely interesting commercial, municipal, equitable, constitutional, and other problems to be solved. Indeed, the progress of civilization may be traced in the litigation passed upon in the courts. An examination of the first few volumes of our reports reveals cases chiefly relating to an agricultural and shipping community. A few years later the beginnings of manufacture appear in petitions under the mill acts; and then comes the advent of railroads, and later the expansion of equitable jurisprudence, until now the manifold activities of our three millions of people are reflected in the instances which demand the application of legal principles.

The final and essential condition for a bench of highest usefulness is a fine bar. Perhaps in no other respect has the contribution of Massachusetts been more generally recognized than in this. It has been said that the judicial fame of Shaw is second only to that of Marshall in the nation.

But the names of Webster and Choate by universal concession head the roll of advocates who have illumined the jurisprudence of the country. Massachusetts has become distinguished and her reputation enhanced by their achievements. But aside from these, there have been Mason, Bartlett, Curtis, Hoar, Dana, and many another, whose splendid leadership constitutes a legacy to our profession rich beyond price, in which all may share who cherish their ideals and emulate their example. Under our system of law, the bench depends, and must depend of necessity, upon the Bar for its strength. Without the assistance derived from the industry, learning and ability of the Bar it would be hard, if not impossible, for the Court to get through with its work. The reputation of the courts rests in no small measure upon the support of the Bar. They understand better than people of other callings the difficulties of judicial labors. They appreciate more deeply the absolute necessity of fearlessness in the performance of judicial duty. They realize how subversive of justice is timidity upon the bench, and how essential is a will capable of withstanding clamor against a faithful interpretation of law, from whatever source it may come. The reputation for the administration of justice is largely in the keeping of the members of the Bar. No court can be expected for a long period of time to rise or remain much higher than the Bar which practise before it.

The voices of apprehension for the future are no louder to-day than they have been in the past. Nearly seventy years ago Chief Justice Shaw, in a public address, said:

> "Almost daily and from various parts of the country do we hear of the triumph of lawless violence, not by individuals only but by masses, who openly set the law at defiance and violate the rights of life, liberty and property, sacrilegiously placing blind rage and sanguinary cruelty upon the throne of justice and trampling under feet all that is dear in domestic, social and political life. Let us not hug ourselves in fancied security, on the consideration that these storms rage at a distance only."

The Bar of Massachusetts never has hugged itself in fancied security. In every generation men have appeared who have grappled with the legal problems of the day with spirit and wisdom. They are as numerous and as filled with zeal for improvement to-day as ever before. "To-day is better than yesterday, and to-morrow will be better than to-day." The law of to-day is better than it was yesterday. It will continue to grow better. But it can do so only through the constant striving of conscientious men to make better. Study, discussion and practical effort of lawyers actuated by high ideals of morality and of the law alone can bring about this result. The formation of this Association, state wide in membership and purpose, gives hopeful promise for the years that are to come. Its stated objects, "to cultivate the science of jurisprudence, to promote reform in the law, and to facilitate the administration of justice" are uplifting. The opportunity which opens before you as its members is most inviting. The profession and the people have a right to look to you for the accomplishing of corresponding results, and for the correction of that which is capable of correction and which stands in the way of the doing of justice in the courts. It is not too much to say that upon the enthusiasm, learning, sound judgment and character of this Association and its members depends in no small measure the future of the law of our beloved Commonwealth. The traditions of her bench and Bar in the past, the just expectations which these arouse, and the opportunity for high public service call, trumpet-tongued, to the present generation, to see to it that the light of her jurisprudence shall lead the way for a brighter and better to-morrow.

REMARKS OF THE HONORABLE EUGENE N. FOSS, GOVERNOR OF MASSACHUSETTS.

Mr. President, — Gentlemen of the Massachusetts Bar Association: I am not consumed with any great desire to address this audience to-night, and I am sure you are not consumed with any desire to hear from me.

I told your president to-night that I had nothing whatever to say. He said, "That is what we usually say at after-dinners speeches." He has told me so many good stories here to-night that if I could repeat two or three of them to you you would enjoy them more than anything I could say. But I am reminded here to-night by Governor Long on the right — and by the way, I have him on my right every day in the year at the State House, for his picture is right upon the wall at my right, and when that picture was painted he had more hair on his head than he has now, and it was red. He reminds me to-night how near I came to being in your profession, for my uncle, who, he tells me, was a classmate of his in the law school, became one of the leading lawyers in the northern part of Vermont, at St. Albans, and it was in his office that I started to study law. There was a young man in the office who had been there a year or two, and when I went into the office my uncle gave me a copy of Blackstone and said, "Now I want you to read so many pages this week and Saturday afternoon I shall find a little time to quiz you on Blackstone." Well, that went on for two or three weeks, and I finally turned to this young fellow and said, "How did you get through this Blackstone? I don't enjoy it." And he said, "I will tell you — I only read a line on a page." Well, I tried that plan and got on better than before. But in the next office on the same floor there was a retired judge who every time he came in from his luncheon would stand in the door of our office and say to this young man and myself, straightening up as he did from his cane, "Young men, the law is a very jealous mistress; she demands your undivided attention." We didn't stay in the profession long. Both of us quit and went into general business.

I remember at that time — about thirty-five years ago this fall — that I went into the court house in St. Albans one day when Senator Edmunds came up there to address the Court as counsel of the Vermont Central Railroad, which had just been placed in the hands of a receiver. In those days a United States Senator could serve the people and the corporation at the same time. They say they don't

do it now. Well, I never shall forget the opening sentence of his argument to the Court, for it ran something like this: "After a great storm at sea you always find the vultures and the sea gulls hovering over the wreck."

Now, I always supposed the wreck was the Vermont Central Railroad, but who the gulls and the vultures were I never heard the Senator explain, although at that time there were a great many distinguished counsel from Boston in town who had come there to look out for the bondholders and the stockholders of the Vermont Central Railroad.

Well, gentlemen, I have contributed something to the legal profession since. I am not referring to the judges but to the financial contributions which I have made to your fraternity. And perhaps it was the fact that the wheels of justice seemed so slow that made me so anxious last year that the number of judges be increased and that their salaries be increased also in order that the wheels of justice might turn faster. It has been my fortune to appoint nine judges — just one-third of the present Superior Court justices and one Supreme Court justice. As to whether they measure up to the high standard of the judiciary of this Commonwealth you are the better judges. But I say that in these appointments I have tried to get the best men possible, for I have considered that my most sacred duty was in the selection of the men for the bench. And I believe that these men should be drawn from the people, as it were; from those who are in close touch and sympathy with the great mass of the people and whom the people would, if it were in their power, choose themselves to preside over their courts of justice.

I thank you very much.

Necrology.

Francis Cabot Lowell was born in 1855. He graduated from Harvard College in 1876. After graduation he travelled for a year in Europe, and then studied at the Harvard Law School for two years. Upon leaving the Law School he was, for one year, private secretary to Mr. Justice Horace Gray, then Chief Justice of Massachusetts. He was admitted to the Bar in 1880 and for eighteen years was engaged in the practice of law. During his practice at the Bar, a sincere, unselfish interest in public matters drew him into political life. He served in the Common Council of the City of Boston in the years 1889, 1890, and 1891; and in 1895 was chosen a member of the Massachusetts House of Representatives. A service of three years in that body gave him a place of marked preëminence in the Legislature.

Judge Lowell was elected to the Board of Overseers of Harvard College in 1886, and held that office until 1895 when he became a Fellow of the Corporation of the University. He served as Fellow until his death.

In 1898 Judge Lowell was appointed by President McKinley United States District Judge for the District of Massachusetts. In 1905 he was appointed a Circuit Judge for the First Circuit by President Roosevelt.

He died March 6, 1911.

Godfrey Morse, son of Jacob and Charlotte (Mehlinger) Morse, was born in Wachenheim, Bavaria, May 19, 1846. He prepared for college at the Boston Latin School and graduated from Harvard in 1870. He received the degree of LL.B. at the Harvard Law School in 1872 and was admitted to the Bar by the Supreme Judicial Court of Massachusetts, July 22, 1873, and to the Bar of the Supreme Court of the United States, February 3, 1879. From 1876

to 1878 he was a member of the School Committee of the City of Boston; 1882 and 1883 he was a member of the Common Council of the City of Boston and during the last year was its president. From 1882 to 1884 he was assistant counsel of the United States in the Court of Commissioners of Alabama claims. In 1885 he was appointed a member of the Board of Court House Commissioners for the erection of a new Court House for the City of Boston. In 1896 he was a delegate to the National Democratic Convention which met at Indianapolis and in 1897 and 1898 he was chairman of the Massachusetts Committee as well as chairman of the City Committee of the National Democratic Party. He was a member of the Board of Trustees of the Boston Dental College, President of the Leopold Morse Home, Vice-president of the Boston Home for Incurables and was President of the Federation of Jewish Charities of Boston. In 1900 he received the honorary degree of A.M. from Tufts College. On January 26, 1907, he married Jeanette Rosenfield. He was associated in the practice of law with Lee M. Friedman and Percy A. Atherton under the firm name of Morse & Friedman. He died after a short illness during a trip abroad at Dresden, June 20, 1911.

Oscar Brownell Mowry was the son of Warren B. and Hannah A. (Brownell) Mowry, and was born in Woonsocket, R.I., June 17, 1840, where he spent his early life. He was graduated from the Woonsocket High School in 1859, and then entered Brown University, where he distinguished himself as a scholar, graduating with honor in 1863 and receiving the degree A.M. in 1866.

On leaving college, Mr. Mowry entered the Harvard Law School, from which he was graduated with the degree of LL.B. in 1865. He continued his legal studies in Boston in the office of the late Charles Theodore Russell, father of Governor William E. Russell. He was admitted to the Bar March 17, 1866, and at once formed a copartnership with Thomas L. Sturtevant, which continued about five years under the firm name of Mowry & Sturtevant. Since then

he had practised alone and had held a prominent place at the Boston Bar. In politics he was an ardent Republican. He was a member of the Boston Common Council for three years, representing in 1877, 1878, and 1879 the Back Bay district.

In 1880 he moved to Brookline. In 1890 he was elected to the Water Board in Brookline, serving as chairman until the date of his death. He was a member of Trinity Church, Riverdale Casino, Men's Club of Brookline, and the Boston Bar Association. In 1879 Mr. Mowry married Georgiana Goodwin, daughter of George C. Goodwin ot the Boston firm of Goodwin and Company. His wife and a sister, Elizabeth Mowry of Union Village, R.I., survive.

James Bailey Richardson was born at Orford, N.H., December 9, 1832. He was educated at the District School in Orford, and at the academy there, and after a year at Yale went to Dartmouth College, from which he was graduated in 1857.

From the very earliest he was attracted to the study ot law. After leaving college he studied for about a year in an office in Concord, N.H., after which he went to Boston and entered the office of Hutchins & Wheeler, then, as now, one of the firms of established reputation. Here he studied for some years side by side with the Honorable Robert M. Morse. In 1859 he was admitted to the Massachusetts Bar, and at once opened an office of his own. From that date for thirty-three years he was an assiduous practitioner of his profession, in which he enjoyed great success and gained the confidence of a very large clientage.

In 1866 he was a member of the Massachusetts House of Representatives; in 1877 and 1878 he was a member of the Boston Common Council; in 1884 he was a member of the Commission which revised the Boston City Charter. In 1889, 1890, and 1891 he was corporation council for the City of Boston, in which capacity he gave many important opinions which are still quoted as authorities on municipal questions. He was a Master in Chancery for sixteen years.

In 1892 and 1893 he served as a member of the Rapid Transit Commission.

At a comparatively early date he was offered a position on the Municipal Court bench but declined; later he received offers of appointment to the Superior Court bench, which were also declined, but in 1892 another offer of a position on the Superior bench was made to him by Governor Russell, and was accepted, and he held this position from that date until his death on August 30, 1911; being at the time of his death the senior justice in point of years, and next to the senior in point of length of service. His long service upon the bench needs no comment at this time. Upon the equity side of the court in particular he left a deep impress, and was called affectionately by his colleagues and the court officers, "The Father of the Equity Court." Certainly no man on the bench made a more close study of the principles of equity law, or was more assiduous in their application to cases of every description and every degree of importance. In 1904 he published a small volume, "Notes on Equity Pleading and Practice in Massachusetts," which was the fruit of his long experience, and which is invaluable for any lawyer who has occasion to go into equity.

Leslie K. Storrs was born in Windsor, Conn., August 9, 1870, and was the son of Francis L. and Emma Mary Kite Storrs. He was admitted to the Bar in the year 1900 and practised law in Boston under the firm name, Goulston & Storrs, until his death on February 1, 1911.

James F. Sweeney, one of the charter members of the Association, died November 16, 1911. He was born in the village of Assabet, now the town of Maynard, September 19, 1859.

He was educated in the public schools, Boston College and Boston University Law School, and was admitted to the Bar in 1888, where an early recognition of his talents soon stamped him as an advocate of recognized ability. His practice was general, and his reputation as a lawyer extended throughout the Commonwealth. He was counsel

in many important civil and criminal cases, and for several years was retained by the Boston Elevated Railway Company as one of its trial attorneys.

In 1894 he was elected to the Legislature from the district in which his native town was located. In politics he was always a Republican and took an active interest in the affairs of his town until his death.

He was a member of the Boston and Middlesex Bar Associations, Boston Clover Club, Social Law Library, Boston Athletic Association, Boston Yacht Club, and Charitable Irish Society.

STEPHEN H. TYNG, son of Dudley A. and Catherine M. (Stevens) Tyng, was born at Hoboken, N.J., August 2, 1851.

He attended Kenyon College, Gambier, Ohio, 1867–1869, and the University of Michigan, 1869–1871. In 1871 he studied medicine in California, and the following year, 1872–1873, attended the Harvard Medical School. He then entered the Boston University School of Law, and graduated there with a degree of LL.B. in 1875. He was subsequently admitted to the Bar. He continued in the active practice of his profession until the time of his death, and in particular sat in very many and important cases, as both auditor and as master. Besides being a member of the Massachusetts Bar Association, he belonged to the American Bar Association, the Bar Association of Middlesex County, and the Boston Real Estate Exchange and Auction Board.

MEMBERS

Massachusetts Bar Association.

January, 1912.

[The Honorary Members are in *Italic* type.]

Abbot, Edwin H. . . . . 14 Beacon St., Boston.
Abbott, John . . . . . 53 State St., Boston.
Abbott, Leon M. . . . . Tremont Bldg., Boston.
Achorn, Edgar O. . . . . 906 Kimball Bldg., Boston.
Adams, Brooks . . . . . 84 State St., Boston.
Adams, Edward B. . . . Social Law Library, Boston.
Adams, Melvin O. . . . 635 Tremont Bldg., Boston.
Adams, Walter . . . . . South Framingham.
Aiken, John A. . . . . . Court House, Boston.
Aldrich, Chas. F. . . . . 602 State Mutual Bldg., Worcester.
Alger, Arthur M. . . . . Taunton.
Allen, Claude L. . . . . 1054 Old South Bldg., Boston.
Allen, Horace G. . . . . 18 Tremont St., Boston.
Allyn, R. A. . . . . Holyoke.
Anderson, Clifford S. . . . Five Cents Savings Bank Bldg., Worcester.
Anderson, Elbridge R. . . 84 State St., Boston.
Anderson, Geo. W. . . . 85 Devonshire St., Boston.
Arnold, Edmund K. . . . 16 State St., Boston.
Atherton, Percy A. . . . 53 State St., Boston.
Atwood, Warren H. . . . Ayer.
Aylward, James F. . . . Tremont Bldg., Boston.

Babson, Thos. M. . . . . 730 Tremont Bldg., Boston.
Badger, Walter I. . . . . 53 State St., Boston.
Bailey, Hollis R. . . . . 19 Congress St., Boston.
Bailey, James A., Jr. . . 412 Barristers Hall, Boston.
Baker, Chas. F. . . . . Fitchburg.
Baker, Henry H. . . . . Hyannis.
Balch, Francis N. . . . . 60 State St., Boston.
Ballentine, Arthur A. . . 55 Congress St., Boston.
Bancroft, Hugh . . . . 910 Barristers Hall, Boston.
Bangs, Francis R. . . . . 18 Tremont St., Boston.
Barlow, R. S. . . . . 53 State St., Boston.
Barnard, Wm. Lambert . . 31 State St., Boston.
Barnes, Charles B., Jr. . . Hemenway, Barnes & Farley, 334 Tremont Bldg., Boston.

Barnes, Geo. L.	Allen & Barnes, 1054 Old South Bldg., Boston.
Barnes, Jonathan	423 Main St., Springfield.
Barney, C. N.	38 Exchange St., Lynn.
Barry, William J.	Barristers Hall, Boston.
Bartlett, Ralph S.	626 Exchange Bldg., Boston.
Bassett, J. Colby	101 Milk St., Boston.
Baxter, Charles S.	801 Tremont Bldg., Boston.
Beal, Boylston A.	60 State St., Boston.
Beale, Joseph H.	Harvard Law School, Cambridge.
Beckwith, Charles H.	Court Square Theatre Bldg., Springfield.
Belden, Chas. F. D.	State Library, State House, Boston.
Bell, Charles U.	60 Bartlett St., Andover.
Bell, Stoughton	60 State St., Boston.
Bellew, Henry E.	54 Court House, Boston.
Bennett, Samuel C.	10 Tremont St., Boston.
Benton, J. H.	Ames Bldg., Boston.
Berenson, Arthur	30 Court St., Boston.
Berry, Henry N.	Berry & Bucknam, 84 State St., Boston.
Berry, John K.	166 Devonshire St., Boston.
Bigelow, Wm. R.	18 Tremont St., Boston.
Bishop, E. B.	Cushing & Bishop, 54 Devonshire St., Boston.
Blackmur, Paul R.	1147 Tremont Bldg., Boston.
Blake, Wm. P.	27 Kilby St., Boston.
Blinn, George R.	30 Court St., Boston.
Blodgett, E. E.	70 State St., Boston.
Blood, Charles W.	60 State St., Boston.
Bond, Lawrence	Old South Bldg., Boston.
Bosworth, Charles W.	31 Elm St., Springfield.
Bowen, H. Ashley	38 Exchange St., Lynn.
Bowker, Harrison W.	731 Slater Bldg., Worcester.
Boyden, Albert	84 State St., Boston.
Brackett, John G.	89 State St., Boston.
Brackett, J. Q. A.	89 State St., Boston.
Brackett, S. C.	Pemberton Bldg., Boston.
Bradlee, Edward C.	84 State St., Boston.
Braley, Henry K.	151 Kilsyth Road, Boston.
Brandeis, Louis D.	Brandeis, Dunbar & Nutter, 161 Devonshire St., Boston.
Breed, Arthur F.	7 Water St., Boston.
Brett, John A.	Pemberton Bldg., Boston.
Brewer, Daniel C.	Brewer, Weed & Weed, 40 Central St., Boston.
Brewster, Frank	Ames Bldg., Boston.
Brigham, Henry R.	53 State St., Boston.
Brooks, Arthur H.	1020 Exchange Bldg., Boston.
Brooks, William H.	31 Elm St., Springfield.

Brown, George H. . . . Quincy, Mass.
Brown, John F. . . . . Court House, Boston.
Brownson, Wendell G. . . 31 Elm St., Springfield.
Buckminster, Wm. R. . . 450 Tremont Bldg., Boston.
Bucknam, Chas. C. . . . Berry & Bucknam, 84 State St., Boston.
Buffum, Robert E. . . . 1045 Tremont Bldg., Boston.
Buffum, Walter N. . . . 45 Milk St., Boston.
Bunker, Clarence A. . . . 904 Barristers Hall, Boston.
Burbank, Chas. E. . . . Stebbins, Storer & Burbank, 53 State St., Boston.
Burdett, Everett W. . . . Burdett & Wardwell, 84 State St., Boston.
Burke, Charles E. . . . . Pingree, Dawes & Burke, Pittsfield.
Burke, Francis . . . . . 53 State St., Boston.
Burke, John H. . . . . Court House, Boston.
Burnham, Addison C. . . Blodgett, Jones & Burnham, 70 State St., Boston.
Burns, Wm. A. . . . . 8 Bank Row, Pittsfield.
Burr, Arthur E. . . . . 15 State St., Boston.
Burrage, George D. . . . 84 State St., Boston.
Burt, Frank H. . . . . 806 Barristers Hall, Boston.
Butler, Howard Fulton . . 30 Court St., Boston.
Butler, John Haskell . . . 246 Washington Street, Boston.

Cabot, Frederick P. . . . Hurlburt, Jones & Cabot, 53 State St., Boston.
Callahan, C. T. . . . . Holyoke.
Carney, Francis J. . . . 1113 Tremont Bldg., Boston.
Carpenter, Edward N. . . Swain, Carpenter & Nay, 101 Tremont St., Boston.
Carroll, Francis M. . . . Carroll & Flye, 18 Tremont St., Boston.
Carroll, James B. . . . . 15 Elm St., Springfield.
Carter, Albert P. . . . . 60 State St., Boston.
Carver, Eugene P. . . . 28 State St., Boston.
Chamberlain, Albert H. . . 78 Chauncy St., Boston.
Chamberlain, Loyed E. . . Chamberlain & Fletcher, Brockton.
Chandler, Albert Minot . . Saville & Chandler, 701 Barristers Hall, Boston.
Chandler, Alfred D. . . . 70 State St., Boston.
Channing, Henry M. . . . 18 Tremont St., Boston.
Chase, Frederic H. . . . Court House, Boston.
Child, Samuel M. . . . . 43 Tremont St., Boston.
Clapp, Robert P. . . . . 50 State St., Boston.
Clark, Chester W. . . . 62 Equitable Bldg., Boston.
Clark, Isaiah R. . . . . Clark & Ordway, 54 Devonshire St., Boston.
Clark, Louis M. . . . . 50 Congress St., Boston.
Clarke, A. F. . . . . 102 Ames Bldg., Boston.
Clarke, George Lemist . . 55 Kilby St., Boston.

Clarke, Henry Martyn	50 State St., Boston.
Clifford, Charles W.	New Bedford.
Clifford, John H.	Crapo, Clifford & Prescott, New Bedford.
Coale, Geo. O. G.	Clarke, Raymond & Coale, 60 State St., Boston.
Codman, James M., Jr.	87 Milk St., Boston.
Codman, Julian	19 Milk St., Boston.
Cohen, Abraham K.	611 Tremont Bldg., Boston.
Cohen, A. S.	30 Court St., Boston.
Coit, George Chandler	1002 Pemberton Bldg., Boston.
Colt, James D.	Colt & Newell, 53 State St., Boston.
Colt, LeBaron B.	U.S. Courts, Boston.
Connor, Theobald M.	160 Main St., Northampton.
Conry, Joseph A.	1 Beacon St., Boston.
Cook, Clifford A.	Milford.
Cook, Frank Gaylord	10 Tremont St., Boston.
Cook, Otis S.	Cook, Brownell & Taber, New Bedford.
Coolidge, Harold J.	40 State St., Boston.
Coolidge, William H.	State Mutual Bldg., Boston.
Corbett, Joseph J.	730 Tremont Bldg., Boston.
Cotter, James E.	Sears Bldg., Boston.
Coulson, Walter	Lawrence.
Cox, Channing H.	426 Tremont Bldg., Boston.
Cox, Guy W.	Butler, Cox, Murchie & Bacon, International Trust Bldg., Boston.
Creed, Michael J.	306 Pemberton Bldg., Boston.
Crocker, George G.	1023 Old South Bldg., Boston.
Cronan, John F.	30 Court St., Boston.
Crosby, John C.	Pittsfield.
Crosby, J. Porter	306 Pemberton Bldg., Boston.
Cummings, James T.	56 N. Main St., Fall River.
Cummings, John W.	56 N. Main St., Fall River.
Cunningham, Frederic	909 Exchange Bldg., Boston.
Cunningham, H. V.	635 Tremont Bldg., Boston.
Curtis, Charles P.	Ames Bldg., Boston.
Cushing, Livingston	10 Tremont St., Boston.
Cushman, Henry O.	53 State St., Boston.
Cushman, Robert	Roberts, Roberts & Cushman, 95 Milk St., Boston.
Cutting, Louis	Sheehan & Cutting, State Mutual Bldg., Worcester.
Daggett, Frederick J.	910 Pemberton Bldg., Boston.
Dallinger, Frederick W.	28 State St., Boston.
Daly, Augustine J.	811 Barristers Hall, Boston.
Dana, Richard H.	19 Congress St., Boston.
Dana, Wm. F.	Court House, Boston.
Darling, Chas. K.	Post Office Bldg., Boston.

Darling, Frederick H. . . 1026 Exchange Bldg., Boston.
Davenport, Charles M. . . 53 State St., Boston.
Davenport, Wm. A. . . . Greenfield.
Davis, Charles Thornton . Land Court, Pemberton Sq., Boston.
Davis, Harold S. . . . . 53 State St., Boston.
Davis, Harrison M. . . . Dunbar & Rackemann, Ames Bldg., Boston.
Dean, Josiah S. . . . . 18 Tremont St., Boston.
DeCourcy, Charles A. . . Court House, Boston.
Devine, John J. . . . . Pratt & Devine, 413 Hildreth Bldg., Lowell.
Dewey, Francis H. . . . 311 Main St., Worcester.
Dewey, George T. . . . 311 Main St., Worcester.
Dexter, J. P. . . . . South Framingham.
Dexter, Philip . . . . . 40 State St., Boston.
Dickerman, Frank E. . . Hale & Dickerman, 18 Tremont St., Boston.
Dickinson, David T. . . . 412 Barristers Hall, Boston.
Dickinson, Marquis F. . . 742 Exchange Bldg., Boston.
Dodge, Edward S. . . . 53 State St., Boston.
Dodge, Frederic . . . . United States Court, Boston.
Dodge, Robert G. . . . . 53 State St., Boston.
Doherty, Jas. L. . . . . Doherty & Brownson, Springfield.
Doran, James P. . . . . Masonic Bldg., New Bedford.
Dow, Rogers . . . . . 15 State St., Boston.
Dresser, Frank F. . . . . 808 Slater Bldg., Worcester.
Drury, Geo. P. . . . . 159 Devonshire St., Boston.
DuBois, Loren G. . . . . 84 State St., Boston.
Dubuque, Hugo A. . . . 11 So. Main St., Fall River.
Duff, John . . . . . Court House, Boston.
Dunbar, Frank E. . . . . 521 Hildreth Bldg., Lowell.
Dunbar, James R. . . . Dunbar & Rackemann, Ames Bldg., Boston.
Dunbar, Ralph W. . . . Ames Bldg., Boston.
Dunbar, William H. . . . Brandeis, Dunbar & Nutter, 161 Devonshire St., Boston.
Dunn, Thatcher B. . . . Savings Bank Bldg., Gardner.

Eisner, Michael L. . . . Noxon & Eisner, Pittsfield.
Elder, Charles R. . . . . 209 Washington St., Boston.
Elder, Edward E. . . . . 89 State St., Boston.
Elder, Samuel J. . . . . 1104 Pemberton Bldg., Boston.
Elliott, Richard P. . . . 53 State St., Boston.
Ellis, David A. . . . . 522 Exchange Bldg., Boston
Ellis, Edward S. . . . . Bourne.
Ellis, Ralph W. . . . . 5 Elm St., Springfield.
Elmore, Samuel D. . . . 60 State St., Boston.
Ely, Henry W. . . . . Springfield.

Ensign, Charles S. . . . 30 Court St., Boston.
Ernst, George A. O. . . . 417 Old South Bldg., Boston.
Estabrook, Geo. Wm. . . 1145 Old South Bldg., Boston.
Esty, Edward T. . . . . Vaughan, Esty & Clark, 340 Main St., Worcester.

Fallon, Joseph D. . . . . 43 Tremont St., Boston.
Farley, J. W. . . . . Tremont Bldg., Boston.
Farlow, John S. . . . . 53 State St., Boston.
Feely, Jos. J. . . . . 95 Milk St., Boston.
Ferber, J. B. . . . . 53 State St., Boston.
Fessenden, Franklin G. . . Court House, Boston.
Field, Fred. T. . . . . 225 State House, Boston.
Fish, Frederick P. . . . Fish, Richardson, Herrick & Neave, 84 State St., Boston.
Fisher, Frederic A. . . . 71 Central St., Lowell.
Fitzgerald, W. T. A. . . . 43 Tremont St., Boston.
Flannery, J. Watson . . . 31 Elm St., Springfield.
Flynn, George A. . . . . 730 Tremont Bldg., Boston.
Forbes, J. Grant . . . . 53 State St., Boston.
Forbes, William T. . . . Worcester.
Forbush, Frank M. . . . 53 State St., Boston.
Ford, Lawrence A. . . . Shawmut Bank Bldg., Boston.
Foster, Alfred D. . . . . 87 Milk St., Boston.
Foster, Reginald . . . . Foster & Turner, 87 Milk St., Boston.
Fowler, Wm. Everett . . Westboro.
Fowler, Wm. P. . . . . 18 Tremont St., Boston.
Fox, Isador . . . . . Barristers Hall, Boston.
Fox, Jabez . . . . . 99 Irving St., Cambridge.
Fox, William H. . . . . Taunton.
Frederick, Walter F. . . . 24 Milk St., Boston.
French, Asa P. . . . . 87 Milk St., Boston.
French, William W. . . . 18 Tremont St., Boston.
Freund, Sanford H. E. . . Law Department, Rock Island R.R. Co., New York, N.Y.
Friedman, Lee M. . . . . 53 State St., Boston.
Frye, Newton P. . . . . 234 Essex St., Lawrence.
Furber, George P. . . . 344 South Station, Boston.

Gage, T. H. . . . . 808 Slater Bldg., Worcester.
Gallagher, Charles T. . . 18 Tremont St., Boston.
Garceau, Albert . . . . 15 State St., Boston.
Garcelon, William F. . . 405 Sears Bldg., Boston.
Gaston, William A. . . . Gaston, Snow & Saltonstall, Shawmut Bank Bldg., Boston.
George, E. Howard . . . 40 Central St., Boston.
George, Elijah . . . . . Probate Court, Boston.
Gilman, Edwin C. . . . . 161 Devonshire St., Boston.

Gleason, Albert A.	Gleason & Higgins, 60 State St., Boston.
Goddard, George A.	10 Tremont St., Boston.
Goodspeed, Alex. McL.	37 Purchase St., New Bedford.
Gordon, John	84 State Street, Boston.
Gorham, Robert S.	60 State St., Boston.
Goulston, Edward S.	Goulston & Storrs, 17 Milk St., Boston.
Grant, Walter B.	18 Tremont St., Boston,
Gray, Burton P.	704 Tremont Bldg., Boston.
Gray, John C.	Ropes, Gray & Gorham, 60 State St., Boston.
Gray, J. Converse	18 Tremont St., Boston.
Gray, Morris	16 State St., Boston.
Gray, Roland	60 State St., Boston.
Greene, F. L.	Greenfield.
Greenhalge, Frederic B.	225 State House, Boston.
Greenough, Chas. P.	262 Washington St., Boston.
Grime, George	8 So. Main St., Fall River.
Grinnell, Frank W.	Hale & Grinnell, 60 State St., Boston.
Grover, Emery	50 Bromfield St., Boston.
Hale, Edwin B.	Hale & Dickerman, 18 Tremont St., Boston.
Hale, Richard W.	Hale & Grinnell, 60 State St., Boston.
Hall, Alfred S.	31 Milk St., Boston.
Hall, Damon E.	Hurlburt, Jones & Cabot, 506 Exchange Bldg., Boston.
Hall, E. K.	Powers & Hall, 101 Milk St., Boston.
Hall, Frank B.	520 State Mutual Bldg., Worcester.
Hall, F. Rockwood	10 Tremont St., Boston.
Hall, Frederick S.	Hall & Hagerty, Taunton.
Hall, John L.	60 State St., Boston.
Hall, Walter Perley	20 Beacon St., Boston.
Halloran, James A.	Williams & Halloran, 15 State St., Boston.
Ham, Guy A.	24 Milk St., Boston.
Hamilton, Samuel K.	Hamilton & Eaton, 31 Milk St., Boston.
Hammond, Franklin T.	50 State St., Boston.
Hammond, John C.	Hammond & Hammond, Northampton.
Hammond, J. W.	Court House, Boston.
Hannigan, John E.	206 Barristers Hall, Boston.
Harding, Heman A.	Chatham.
Hardy, Arthur P.	70 State St., Boston.
Hardy, John H.	Arlington.
Harris, Charles N.	Winchester.
Harris, Henry F.	340 Main St., Worcester.
Harris, Robert O.	East Bridgewater.
Harvey, George S.	166 Devonshire St., Boston.
Haywood, Charles E.	19 Congress St., Boston.

Heady, Wallace R.	Court Sq. Theatre Bldg., Springfield.
Hemenway, Alfred	Hemenway, Barnes & Farley, 334 Tremont Bldg., Boston.
Herbert, John	19 Milk St., Boston.
Hesseltine, Norman F.	10 Tremont St., Boston.
Hibbard, Charles E.	Pittsfield.
Hill, Arthur D.	Hill, Barlow & Homans, 53 State St., Boston.
Hill, Edwin N.	523 Kimball Bldg., Boston.
Hill, James Gilbert	39 Hildreth Bldg., Lowell.
Hills, George E.	100 Boylston St., Boston.
Hitch, Mayhew R.	Masonic Bldg., New Bedford.
Hitchcock, Loranus E.	Court House, Boston.
Hitchcock, Wm. Harold	53 State St., Boston.
Hoague, Theodore	84 State St., Boston.
Hodges, George C.	31 Milk St., Boston.
Holland, Bert E.	Tremont Bldg., Boston.
Holmes, Edward J.	53 State St., Boston.
Holmes, Oliver Wendell	U.S. Supreme Court, Washington, D.C.
Homans, Robert	Hill, Barlow & Homans, 53 State St., Boston.
Homer, Thomas J.	4 Linwood Sq., Roxbury.
Howard, Arthur L.	53 State St., Boston.
Howe, Elmer P.	53 State St., Boston.
Howland, Willard	Howland & Warren, 18 Tremont St., Boston.
Hubbard, Charles Eustis	59 Temple Place, Boston.
Hudson, Gardner K.	11 Park Bldg., Fitchburg.
Hudson, Woodward	344 So. Station, Boston.
Hughes, J. T.	50 Congress St., Boston.
Hunneman, Carleton	Hunneman & Balch, 60 State St., Boston.
Hunnewell, Francis W., 2d	53 State St., Boston.
Hunnewell, James M.	340 Tremont Bldg., Boston.
Hunt, Thomas	55 Congress St., Boston.
Huntress, George L.	Sears Bldg., Boston.
Hurlburt, Henry F.	Hurlburt, Jones & Cabot, 53 State St., Boston.
Hurtubis, Francis, Jr.	6 Beacon St., Boston.
Hutchings, Henry M.	73 Tremont St., Boston.
Hutchins, Edward W.	Hutchins & Wheeler, 511 Sears Bldg., Boston.
Hutchinson, Freedom	Ames Bldg., Boston.
Innes, Chas. H.	53 State St., Boston.
Irwin, Richard W.	Northampton, Mass.
Jackson, James F.	914 Barristers Hall, Boston.
James, Ellerton	10 P. O. Sq., Boston.

James, Henry, Jr. . . . 84 State St., Boston.
Jenney, Charles F. . . . Court House, Boston.
Jennings, Andrew J. . . . 23 So. Main St., Fall River.
Johnson, Benjamin N. . . 50 State St., Boston.
Johnson, Edward F. . . . Woburn.
Johnson, Ernest H. . . . 17 Milk St., Boston.
Johnson, Melvin M. . . . 89 State St., Boston.
Johnson, Reginald H. . . 53 State St., Boston.
Jones, B. B. . . . . 506 Exchange Bldg., Boston.
Jones, Matt. B. . . . . 50 Oliver St., Boston.
Jones, Nathaniel N. . . . Old South Bldg., Boston.
Joslin, Ralph E. . . . . 10 Tremont St., Boston.
Joyner, Herbert C. . . . Joyner & Whitney, Gt. Barrington.

Kaan, Frank W. . . . . 50 State St., Boston.
Katz, Maurice L. . . . . State Mutual Bldg., Worcester.
Keating, Patrick M. . . . 34 Eliot St., Jamaica Plain.
Keefe, John A. . . . . 10 Tremont St., Boston.
Kellen, Wm. V. . . . . 390 Commonwealth Ave., Boston.
Kelley, George W. . . . Rockland.
Kelley, James E. . . . . 901 Old South Bldg., Boston.
Kendricken, John M. . . 626 Exchange Bldg., Boston.
Kenny, Thomas J. . . . Morse, Kenny & Bell, 28 State St., Boston.
Kent, Everett E. . . . . 84 State St., Boston.
Kerns, John A. . . . . 8 So. Main St., Fall River.
Kerwin, J. J. . . . . 45 Merrimack St., Lowell.
Keyes, Prescott . . . . Barristers Hall, Boston.
Kimball, Benjamin . . . 60 State St., Boston.
King, C. C. . . . . Bixby Bldg., Brockton.
King, Henry A. . . . . Court House, Springfield.
Kittredge, Francis W. . . 18 Tremont St., Boston.
Knight, Henry F. . . . . Johnson, Clapp & Underwood, 50 State St., Boston.
Knight, Robert A. . . . . Knight & Brewster, 500 Main St., Springfield.
Knowlton, M. P. . . . . Court House, Boston.

Ladd, Babson S. . . . . 10 Tremont St., Boston.
Ladd, Walter A. . . . . 754 Old South Bldg., Boston.
Lasker, Henry . . . . . 310 Main St., Springfield.
Lawler, Frank J. . . . . Greenfield.
Lawton, Frederick . . . . Court House, Boston.
Lawton, Geo. F. . . . . Middlesex Probate Court, Cambridge.
Leahy, John P. . . . . Leahy & Pelletier, 18 Tremont St., Boston.
Leary, Daniel E. . . . . Springfield.
Leverett, Geo. V. . . . . 53 Devonshire St., Boston.
Leveroni, Frank . . . . Leveroni & Bailen, 815 Tremont Bldg., Boston.

Lewenberg, Solomon	514 Tremont Bldg., Boston.
Light, Robert W.	60 State St., Boston.
Lilley, Charles S.	236 Fairmount St., Lowell.
Lincoln, Albert L.	126 State St., Boston.
Lincoln, Arba N.	29 Bedford St., Fall River.
Linscott Frank K.	60 Congress St., Boston.
Loomis, Elihu G.	28 State St., Boston.
Lord, Arthur	70 State St., Boston.
Loring, Augustus P.	40 State St., Boston.
Loring, Victor J.	Moulton, Loring & Loring, Old South Bldg., Boston.
Loring, Wm. Caleb	Court House, Boston.
Lothrop, Thornton K., Jr.	35 Equitable Bldg., Boston.
Lourie, David A.	Old South Bldg., Boston.
Lourie, Moses S.	Lourie & Lourie, 27 School St., Boston.
Lovering, Charles T.	610 Sears Bldg., Boston.
Lowell, James A.	38 Equitable Bldg., Boston.
Lowell, John	38 Equitable Bldg., Boston.
Luce, Robert	50 State St., Boston.
Lummus, Henry T.	Lynn.
Lyford, Edwin F.	500 Main St., Springfield.
Lynde, A. Selwyn	68 Cornhill, Boston.
Magenis, James P.	801 Tremont Bldg., Boston.
Mahoney, J. J.	Court House, Lawrence.
Mahoney, J. P. S.	Mahoney & Mahoney, Lawrence.
Malone, Dana	506 Sears Bldg., Boston.
Maloney, John M.	450 Tremont Bldg., Boston.
Mansfield, Frederick W.	Old South Bldg., Boston.
Marble, Frederick P.	71 Central St., Lowell.
Marden, Oscar A.	412 Sears Bldg., Boston.
Mason, John W.	Northampton.
Mayberry, Geo. L.	50 State St., Boston.
Mayo, Henry R.	333 Union St., Lynn.
McAnarney, John W.	412 Sears Bldg., Boston.
McClennen, Edward F.	161 Devonshire St., Boston.
McConnell, James E.	McConnell & McConnell, 914 Tremont Bldg., Boston.
McIntire, Chas. H.	McIntire & Wilson, Wyman's Exchange, Lowell.
McKechnie, William G.	31 Elm St., Springfield.
McLaughlin, John D.	Court House, Boston.
McPeck, Edwin K.	North Adams.
Mellen, Charles C.	209 Washington St., Boston.
Mellish, William C.	Slater Bldg., Worcester.
Merriam, John M.	99 State St., Boston.
Metzler, Curtis G.	Tremont Bldg., Boston.
Michelman, Joseph	608 Pemberton Bldg., Boston.

Miller, Samuel W. . . . 352 Main St., Fitchburg.
Millett, Joshua H. . . . 40 Central St., Boston.
Milliken, Frank A. . . . 33 Masonic Bldg., New Bedford.
Milton, Charles C. . . . State Mutual Bldg., Worcester.
Mitchell, Charles . . . . 16 Masonic Bldg., New Bedford.
Moody, W. H. . . . . . Haverhill, Mass.
Morgan, Clement G. . . . 39 Court St., Boston.
Morse, Wm. A. . . . . 54 Equitable Bldg., Boston.
Morton, James M. . . . Court House, Boston.
Morton, Jas. M., Jr. . . . Jennings, Morton & Brayton, 23 So. Main St., Fall River.
Morton, Marcus . . . . Court House, Boston.
Mulligan, Henry C. . . . 726 Tremont Bldg., Boston.
Murphy, Dennis J. . . . 27 Central Block, Lowell.
Murphy, Jas. R. . . . . 27 School St., Boston.
Myers, James J. . . . . Myers & Brooks, 53 State St., Boston.
Myrick, N. Sumner . . . Barristers Hall, Boston.

Nay, Frank N. . . . . Tremont Bldg., Boston.
Nelson, Julius . . . . . 18 Tremont St., Boston.
Newell, James M. . . . Colt & Newell, 53 State St., Boston.
Niles, Clarence P. . . . . 508 Dowlin Block, North Adams.
Niles, W. H. . . . . Niles, Stevens, Underwood & Mayo, 333 Union St., Lynn.
Norcross, Grenville H. . . O. & G. H. Norcross, 50 Congress St., Boston.
Norton, Fred L. . . . . 432 Tremont Bldg., Boston.
Norwood, C. Augustus . . 70 State St., Boston.
Noxon, John F. . . . . Noxon & Eisner, Pittsfield.
Nutter, Geo. R. . . . . 161 Devonshire St., Boston.

O'Brien, Edward B. . . . 31 Exchange St., Lynn.
O'Connell, David F. . . . 311 Main St., Worcester.
O'Connell, Joseph F. . . . 53 State St., Boston.
O'Donnell, James E. . . . 45 Merrimack St., Lynn.
Ogden, H. W. . . . . 834 Tremont Bldg., Boston.
Olmstead, James W. . . . 125 P.O. Bldg., Boston.
Olney, Richard . . . . . 710 Sears Bldg., Boston.
O'Loughlin, Patrick . . . 18 Tremont St., Boston.
Ong, Eugene W. . . . . 735 Exchange Bldg., Boston.

Palfrey, John G. . . . . 84 State St., Boston.
Palmer, Grant M. . . . . 6 Beacon St., Boston.
Palmer, Joseph N. . . . 45 Milk St., Boston.
Parker, Herbert . . . . Parker & Milton, 910 Barristers Hall, Boston.
Parker, Philip S. . . . . Goodwin, Dresel & Parker, 84 State St., Boston.

Parker, Robert Chapin . . Westfield.
Parker, Wm. C. . . . . 29 Masonic Bldg., New Bedford.
Parsons, Birney C. . . . 19 Congress St., Boston.
Parsons, Starr . . . . . 38 Exchange St., Lynn.
Partridge, Olcott O. . . . 719 Tremont Bldg., Boston.
Patrick, Henry B. . . . . 28 State St., Boston.
Paul, Frank . . . . . Dillaway & Paul, 45 Milk St., Boston.
Payson, Edward P. . . . 150 Devonshire St., Boston.
Peabody, Francis, Jr. . . Devonshire Bldg., Boston.
Pearl, Francis H. . . . . Pearl & Carlton, Haverhill.
Pease, Frank A. . . . . 31 So. Main St., Fall River.
Peck, John H. . . . . 119 Milk St., Boston.
Pelletier, Joseph C. . . . Leahy & Pelletier, 18 Tremont St., Boston.
Perkins, Edward C. . . . Perkins & Stone, 706 Sears Bldg., Boston.
Perkins, Thomas N. . . . 60 State St., Boston.
Peters, W. Scott . . . . Haverhill.
Phelps, Carlton T. . . . No. Adams.
Phillips, Arthur S. . . . 22 Bedford St., Fall River.
Phillips, Benjamin . . . Phillips, Van Everen & Fish, 53 State St., Boston.
Phillips, Sidney A. . . . So. Framingham.
Phipps, George V. . . . Phipps, Durgin & Cook, Kimball Bldg., Boston.
Pickman, John J. . . . . Hildreth Bldg., Lowell.
Pierce, Edward P. . . . Court House, Boston.
Pillsbury, Albert E. . . . 6 Beacon St., Boston.
Pinkham, Walter S. . . . 954 Old South Bldg., Boston.
Poor, John R. . . . . 1120 Beacon St., Brookline.
Powers, Samuel L. . . . Powers & Hall, 101 Milk St., Boston.
Pratt, Nathan A. . . . . Court House, Boston.
Prescott, Oliver . . . . Crapo, Clifford & Prescott, New Bedford.
Pulsifer, George Royal . . 412 Barristers Hall, Boston.
Putnam, Henry W. . . . 1001 Old South Bldg., Boston.
Putnam, Wm. L. . . . . 60 State St., Boston.
Putnam, Wm. L. . . . . U.S. Courts, Boston.

Qua, Stanley E. . . . . 518 Hildreth Bldg., Lowell.
Quincy, Josiah H. . . . 19 Milk St., Boston.
Quinn, Joseph F. . . . . Court House, Boston.

Rackemann, Chas. S. . . Rackemann & Brewster, 75 Ames Bldg., Boston.
Rand, Arnold A. . . . . 178 Devonshire St., Boston.
Rand, Edward L. . . . . 53 State St., Boston.
Ranney, Fletcher . . . . 6 Beacon St., Boston.
Ratigan, J. B. . . . . . 390 Main St., Worcester.
Raymond, Edward T. . . Clerk of Cent. Dist. Ct. of Worcester.

Raymond, John M.	81 Washington St., Salem.
Raymond, Robert F.	Newton Centre.
Read, Charles C.	31 State St., Boston.
Rice, John C.	714 Shawmut Bank Bldg., Boston.
Richards, Albin L.	53 State St., Boston.
Richardson, Henry T.	18 Tremont St., Boston.
Robbins, Reginald L.	Robbins & Fullerton, 19 Congress St., Boston.
Robinson, Walter S.	500 Main St., Springfield.
Robson, Stuart M.	476 Main St., Springfield.
Rogers, Henry M.	89 State St., Boston.
Rogers, William C.	43 Tremont St., Boston.
Rollins, Weld A.	84 State St., Boston.
Rowell, Wilbur E.	Rowell & Clay, 301 Essex St., Lawrence.
Rubenstein, Philip	53 State St., Boston.
Rugg, Arthur P.	Court House, Boston.
Ruggles, Daniel B.	73 Tremont St., Boston.
Ruggles, Henry E.	Franklin.
Russell, Arthur H.	27 State St., Boston.
Russell, J. Porter	18 Tremont St., Boston.
Saltonstall, E. P.	60 State St., Boston.
Saltonstall, Richard M.	Gaston, Snow & Saltonstall, Shawmut Bank Bldg., Boston.
Sanderson, Geo. A.	Ayer.
Saunders, Amos T.	Dame & Saunders, Clinton.
Saunders, Charles G.	D. & C. & C. G. Saunders, 95 Milk St., Boston.
Saville, Huntington	Saville & Chandler, 701 Barristers Hall, Boston.
Sawyer, Alfred P.	45 Merrimack St., Lowell.
Sawyer, Geo. A.	73 Tremont St., Boston.
Sawyer, Henry C.	53 State St., Boston.
Schofield, Wm.	U.S. Courts, Boston.
Scott, Augustus E.	100 Ames Bldg., Boston.
Scott, Henry R.	60 State St., Boston.
Sears, Geo. B.	114 Washington St., Salem.
Sears, Russell A.	101 Milk St., Boston.
Sears, Wm. R.	73 Tremont St., Boston.
Shattuck, Charles E.	19 Congress St., Boston.
Shattuck, Henry L.	60 State St., Boston.
Sheehan, John W.	Sheehan & Cutting, 605 State Mutual Bldg., Worcester.
Sheehan, Joseph A.	53 State St., Boston.
Sheldon, Henry N.	Court House, Boston.
Shepard, Harvey N.	1048 Exchange Bldg., Boston.
Sherman, Clifford P.	33 Masonic Bldg., New Bedford.
Sherman, Edgar J.	Court House, Boston.

Simpson, Frank L.	159 Devonshire St., Boston.
Sisk, Jas. H.	Sisk Bros., 145 Munroe St., Lynn.
Slade, David F.	Fall River.
Slater, John S.	18 Tremont St., Boston.
Slattery, C. H.	43 Tremont St., Boston.
Smith, Fitz Henry, Jr.	35 Congress St., Boston.
Smith, Jeremiah, Jr.	84 State St., Boston.
Smith, Arthur Thad	45 Milk St., Boston.
Snow, Charles A.	Snow & Knight, 50 Ames Bldg., Boston.
Southard, Louis C.	601 Tremont Bldg., Boston.
Spalter, Frank B.	Winchendon.
Sparrow, Frank M.	30 Purchase St., New Bedford.
Sprague, Charles H.	15 Beacon St., Boston.
Sprague, Henry H.	1023 Old South Bldg., Boston.
Spring, Arthur L.	435 Tremont Bldg., Boston.
Spring, Romney	Tremont Bldg., Boston.
Stanton, Horace B.	60 State St., Boston.
Stebbins, Charles H.	Stebbins, Storer & Burbank, 53 State St., Boston.
Stetson, Eliot Dawes	New Bedford.
Stevens, Elisha M.	Niles, Stevens, Underwood & Mayo, Lynn.
Stevens, W. B.	Court House, Boston.
Stewart, Frank H.	Stewart, Coolidge & Rand, 6 Beacon St., Boston.
Stewart, Ralph A.	Choate, Hall & Stewart, 60 State St., Boston.
Stiles, Jas. A.	Gardner.
Stockbridge, Wm. M.	628 Exchange Bldg., Boston.
Stone, Charles B.	West Acton.
Stone, Wilmore B.	15 Elm St., Springfield.
Stoneman, David	610 Pemberton Bldg., Boston.
Storer, Oscar	Stebbins, Storer & Burbank, 53 State St., Boston.
Storey, Moorfield	735 Exchange Bldg., Boston.
Storrow, James J.	44 State St., Boston.
Stratton, Charles E.	70 State St., Boston.
Strout, Henry F.	27 William St., New York; 85 Water St., Boston.
Studley, James B.	161 Devonshire St., Boston.
Sturgis, Roger F.	68 Ames Bldg., Boston.
Sullivan, E. Mark	53 State St., Boston.
Sullivan, James W.	31 Exchange St., Lynn.
Sullivan, John A.	450 Tremont Bldg., Boston.
Sullivan, Lynde	35 Congress St., Boston.
Sullivan, Michael A.	606 Bay State Bldg., Lawrence.
Sullivan, William B.	538 Tremont Bldg., Boston.
Swaim, Roger D.	60 State St., Boston.

Swan, Chas. H. . . . . 1145 Old South Bldg., Boston.
Sweetser, George A. . . . 84 State St., Boston.
Sweetser, I. Homer . . . 53 State St., Boston.
Swift, Henry W. . . . . 50 State St., Boston.
Swift, James M. . . . . 8 So. Main St., Fall River.
Swift, John E. . . . . Milford, or 18 Tremont St., Boston.

Taft, George S. . . . . Taft & Stobbs, 708 Slater Bldg., Worcester.
Taft, Stephen S. . . . . Court Sq. Theatre Bldg., Springfield.
Taintor, Giles . . . . . 53 State St., Boston.
Thayer, Ezra R. . . . . Harvard Law School, Cambridge.
Thayer, Henry H. . . . . 340 Main St., Worcester.
Thompson, Francis M. . . Judge of Probate, Franklin County, Greenfield.
Thompson, Marshall P. . . 31 State St., Boston.
Thompson, Wm. G. . . . Matthews, Thompson & Spring, 1134 Tremont Bldg., Boston.
Thorndike, J. L. . . . . 735 Exchange Bldg., Boston.
Tinkham, George H. . . . Barristers Hall, Boston.
Trask, Wm. Ropes . . . 40 State St., Boston.
Travis, George C. . . . . 101 Milk St., Boston.
Tucker, Geo. F. . . . . 614 Barristers Hall, Boston.
Turner, Wm. D. . . . . Foster & Turner, 87 Milk St., Boston.
Twombly, Howland . . . 84 State St., Boston.
Tyler, Charles H. . . . . Tyler & Young, Ames Bldg., Boston.

Underwood, Edward S. . . 333 Union St., Lynn.
Underwood, W. Orison . . 50 State St., Boston.
Upton, Eugene C. . . . . 166 Devonshire St., Boston.

Vahey, James H. . . . . 18 Tremont St., Boston.
Van Kleeck, Walter L. . . Hutchins & Wheeler, 511 Sears Bldg., Boston.
Vaughan, Ernest H. . . . Vaughan, Esty & Clark, 340 Main St., Worcester.
Vaughan, Henry G. . . . 53 State St., Boston.

Wakefield, John Lathrop . 178 Devonshire St., Boston.
Wait, Wm. Cushing . . . Court House, Boston.
Walker, Henry . . . . . 83 Cornhill, Boston.
Walsh, P. D. . . . . 6 Beacon St., Boston.
Ward, Clarence S. . . . 546 Tremont Bldg., Boston.
Wardner, G. Philip . . . 28 State St., Boston.
Ware, Charles E. . . . . Fitchburg.
Ware, Horace E. . . . . 110 Summer St., Boston.
Warner, H. E. . . . . Warner, Warner & Stackpole, 84 State St., Boston.

Warner, Jos. B.	Warner, Warner & Stackpole, 84 State St., Boston.
Warner, M. B.	Pittsfield.
Warner, Roger S.	84 State St., Boston.
Warren, Bentley W.	Warren, Garfield, Whiteside & Lamson, 60 State St., Boston.
Warren, Charles	262 Washington St., Boston.
Warren, Edward H.	84 State St., Boston.
Warren, Joseph F.	Warren & Burt, 50 Congress St., Boston.
Warshauer, Charles S.	53 State St., Boston.
Waterman, Curtis H.	246 Washington St., Boston.
Waters, Bertram G.	92 State St., Boston.
Webster, Allen	438 Main St., Springfield.
Webster, Charles S.	405 Main St., Worcester.
Weed, Alonzo R.	40 Central St., Boston.
Weed, Arthur H.	53 State St., Boston.
Weed, C. F.	53 State St., Boston.
Weed, George M.	Brewer, Weed & Weed, 40 Central St., Boston.
Welsh, Walter	Provincetown.
Wellman, Arthur H.	1040 Old South Bldg., Boston.
Weston, Robert D.	70 State St., Boston.
Wharton, Wm. F.	50 State St., Boston.
Wheeler, Henry	Hutchins & Wheeler, 511 Sears Bldg., Boston.
Whipple, Sherman L.	Tremont Bldg., Boston.
White, Alden P.	Salem.
White, Lloyd E.	Court House, Boston.
White, Luther	Chicopee.
Whiteside, Alexander	Warren, Garfield, Whiteside & Lamson, 60 State St., Boston.
Whitman, Edmund A.	1101 Pemberton St., Boston.
Whittemore, C. A.	728 Exchange Bldg., Boston.
Whittlesey, John J.	1 Central Block, Pittsfield.
Wier, Frederick N.	103 Central St., Lowell.
Wiggin, Joseph	28 State Street, Boston.
Wiles, Thomas L.	84 State Street, Boston.
Williams, A. Nathan	10 Tremont St., Boston.
Williams, Charles M.	Old Lowell Nat'l Bank, Lowell.
Williams, Harold P.	60 Congress St., Boston.
Williams, Moses	126 State St., Boston.
Williston, Samuel	Harvard Law School, Cambridge.
Wilson, Butler R.	34 School St., Boston.
Wilson, Edgar V.	Athol.
Winn, John J.	Haverhill.
Withington, Arthur	76 State St., Newburyport.
Wolcott, Roger	60 State St., Boston.
Wood, L. Elmer	119 Granite Block, Fall River.

Wooden, Frederick G. . . City Solicitor, Springfield.
Worthen, Albert P. . . . 27 School St., Boston.
Worthington, John W. . . 60 State St., Boston.
Wrightington, S. R. . . . 31 State St., Boston.
Wyman, Bruce . . . . . Harvard Law School, Cambridge.
Wyman, Henry A. . . . 53 State St., Boston.
Wyman, John P. . . . . 30 Court St., Boston.

Young, Owen D. . . . . Ames Bldg., Boston.
Young, Stephen E. . . . 84 State St., Boston.
Youngman, Wm. S. . . . 19 Congress St., Boston.